

In the Matter of:)
)
Application for Certification) Docket No.
for Mirant Delta's Contra) 00-AFC-01
Power Project)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Garret Shean, Hearing Officer

STAFF PRESENT

Lisa DeCarlo, Staff Counsel

Cheri Davis, Project Manager

Obed Odoemelam

Amanda Stennick

Jon Davidson, Consultant

APPLICANT

Emilio Varanini
Livingston & Mattesich

Mark Stone
Mark Harrer
Ronald Kino
Mirant Corporation

Dale D. Shileikis
URS

Robert K. Weatherwax

SERA

INTERVENOR

Tony Chapman
Sportsman Yacht Club

ALSO PRESENT

Charles "Bill" Worrell

Carol Hager

PUBLIC ADVISER

Marija Krapceovich
Assistant Public Adviser

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1 P R O C E E D I N G S

2 HEARING OFFICER SHEAN: Good morning.

3 This is Garret Shean. We are here in the Del-
4 Mirant Contra Costa Power Project case, on a
5 Committee workshop. The purpose of today,
6 tomorrow, and next Tuesday is to through a review
7 of the potential impacts of the project, and the
8 potential mitigation.

9 We are largely using the Staff
10 Assessment as the document to guide us through
11 this. By virtue of a notice that was issued on
12 February 28th, we have broken our topics into
13 three segments, and as shown on Appendix A of the
14 notice of this workshop, we will be dealing with
15 ten to a dozen or so topics today.

16 And what we propose to do is basically
17 have an open and free-flowing discussion. The
18 fact that this is being reported is not for the
19 purpose of chilling any of the exchange. It's
20 just an aid that will be an aid to me once we get
21 to the point of conducting the Evidentiary
22 Hearings, in terms of -- and the writing of the
23 Presiding Member's Proposed Decision, in terms of
24 what the changes actually may be to any of the
25 language of the conditions, or any other part of

1 the analysis.

2 So if at some point any of the
3 participants in the meeting feel that the fact
4 that this is being reported is not allowing a free
5 flow of ideas, we can always adjourn the meeting
6 briefly, and you can have any discussions among
7 yourselves you think would be productive. And
8 then we'll come back on the record.

9 With that, why don't we have some
10 introductions initially from the Commission Staff,
11 the Applicant, and our Intervenor.

12 MS. DAVIS: My name is Cheri Davis, and
13 I'm the Project Manager for this case.

14 MS. DeCARLO: I am Lisa DeCarlo, and I'm
15 the Staff counsel for the Energy Commission.

16 MR. HARRER: Mark Harrer, Project
17 Director for Mirant Corporation.

18 MR. VARANINI: Gene Varanini, with the
19 law firm of Livingston and Mattesich, and I'm the
20 project counsel.

21 MR. SHILEIKIS: Dale Shileikis,
22 consultant to Mirant, from the URS Corporation.

23 HEARING OFFICER SHEAN: And Mr. Chapman.

24 MR. CHAPMAN: Tony Chapman, Sportsman's
25 Yacht Club.

1 HEARING OFFICER SHEAN: Okay. The order
2 of presentation we have here is to basically run
3 through Appendix A. We will do this basically as
4 quickly as the circumstances will allow us to do,
5 and if we finish early, then we finish early, and
6 we can talk about or sort of set up what we're
7 going to do tomorrow.

8 So with that, I think what we're looking
9 to do is basically go through the topic areas, see
10 whether there is either disagreement or concern
11 about any of the conditions that are in the
12 Staff's Final Assessment, do any changes or
13 wordsmithing that we can do under these
14 circumstances, or that can be done independently
15 between the Applicant, the Staff, and any
16 Intervenor that are interested in that particular
17 topic, with the goal of trying to reach a
18 consensus on this and not having to adjudicate it
19 again in an Evidentiary Hearing.

20 At the end of each topic I'm going to
21 ask whether or not there is a party present who
22 wishes to take this matter to the Evidentiary
23 Hearing and have witnesses present it. If there
24 is no such request, then we will permit, for the
25 economy of the proceedings, both the Applicant and

1 the Staff to present that particular topic item
2 with a declaration that is just a document, not a
3 personal appearance, indicating that it was
4 prepared by the particular person and is true and
5 correct to the best of his or her knowledge and
6 belief. And only live witnesses will be required
7 for those areas that are contested.

8 So with that, why don't we move to --
9 first, to Cultural Resources, and in the Staff
10 document that begins on page 309.

11 MR. VARANINI: Mr. Shean, as a kind of
12 -- just a comment on kind of an issue that's
13 common to all of the subject matters, I believe,
14 the entire Staff Assessment and in the
15 verification, the Conditions of Certification as
16 recommended, and the verification. Having had
17 some familiarity with the -- the progressive
18 movement to have standard conditions, and noting
19 that even with that -- within that progression
20 there was allowance for -- there will be an
21 allowance for special circumstances, we, in kind
22 of honoring our commitment to -- if we're
23 successful, to have our machine online at the
24 earliest possible date, we would like to take some
25 time at some point with the Staff and the

1 Intervenor to discuss essentially whether the kind
2 of 90/60/45 day lead time format can be reduced.

3 The reasons for that are transparent.

4 As an example, you have a 90 day requirement to --
5 you have to designate a whole set of essentially
6 environmental referees 90 days prior to start of
7 construction. And in our case we'd like to start
8 construction in June or July, at the latest, and
9 we're at the 90 day, we're crossing the line of
10 departure, we're at the 90 day point right now.

11 And so what would happen, it seems to
12 us, is that we would have an immediate, if we go
13 with the 90/60/45 day sequencing of various
14 conditions, what'll happen is that we're simply
15 going to slip the start date accordingly.

16 Now, we know that the Staff, under
17 extremis in other cases, has had to move on what I
18 would call just maximum velocity for the summer
19 machines of this year and some other things that
20 are going on. But we think that we could set up a
21 mutually agreeable and reasonable timeline, but it
22 might look a lot more like a 45/30 day sequence,
23 rather than 90/60 sequence.

24 Many of the conditions are
25 administrative. These appointments, things like

1 that, but there are some that include plans and
2 floor plans, and agreed upon plans, and we want to
3 make sure that if we -- that everyone is in
4 agreement, or can help us analyze what the best
5 way would be, assuming, again, we are approved to
6 expedite the movement of paper forward on the
7 start of construction, try to get those to
8 milestones put together, or moved as closely
9 together as possible.

10 HEARING OFFICER SHEAN: Yeah. I think
11 this is an issue that generally has become more
12 critical, as it's become apparent that developers
13 in almost all the proceedings at the Commission
14 are intending to commence construction virtually
15 upon certification, and that the timelines that
16 are provided in many of the conditions for events
17 to occur prior to either site disturbance or
18 ground disturbance, or something of that order,
19 basically mean that the -- the condition would
20 have to be complied with prior to certification.

21 And I think to some degree the
22 Commission's Compliance Office is -- has
23 anticipated this, and is beginning to provide for
24 filings even while the proceeding is technically
25 under way.

1 But I think there's -- there's no
2 obvious public purpose which would prevent the
3 Committee in this particular proceeding from
4 attempting to address that general condition in a
5 way that will allow the Applicants to provide the
6 information that they have, as it becomes
7 available, and for the Commission Staff to process
8 it in a timely way.

9 So perhaps as we go through these, if
10 there's some specific ones you want to be pointing
11 out that you would like changed, we can do that.
12 And then I think probably communicate more
13 specifically with the Compliance Manager and find
14 out how they're addressing it, because I -- I know
15 that in many of the proceedings that are ongoing,
16 this is exactly the circumstance that they're
17 facing. And I can be better informed of what
18 they're doing to address it, because I'm sure they
19 are doing something.

20 All right.

21 MR. CHAPMAN: Mr. Shean, there -- has
22 some kind of approval already been given in this
23 case to -- to start work?

24 HEARING OFFICER SHEAN: No.

25 MR. CHAPMAN: What would explain

1 demolition work already starting as of last --
2 last Saturday, over in the -- the recreation area?

3 HEARING OFFICER SHEAN: I'm not sure. I
4 have no knowledge of that, and I don't know what
5 the activity is intended to be.

6 MR. KINO: Tony, I think we started some
7 NOx work -- yeah, Ron Kino, with Mirant
8 Corporation.

9 Mr. Chapman, we started some NOx work,
10 and so probably that work is associated with the
11 NOx retrofit work. We are -- we are retrofitting
12 some of the existing units at the plant to lower
13 the NOx emissions as part of a Bay Area air
14 regulation, and that work is probably starting.
15 That's probably the activity you're seeing, Tony.

16 MR. CHAPMAN: Would that activity be
17 over in the -- in the recreation area?

18 MR. KINO: I don't believe so. It
19 shouldn't be over in that area. There may be
20 laydown, or -- or such.

21 MR. CHAPMAN: That's a picture taken
22 last Saturday of where they've started tearing
23 down the awnings and things around the trailer.
24 Just trying to understand how that proceeds
25 without the approval of this Committee.

1 MR. VARANINI: We will check that out,
2 but I think this, you know, as an immediate
3 reaction, there are probably eight or nine
4 projects in California now, where either equipment
5 is going in to the machines that are left onsite,
6 usually air abatement equipment, and the sites are
7 heavily mobilized. And there's machines out
8 there, there's all our equipment, there's working
9 crews, so forth and so on. And it makes it real
10 messy, compared to the old days where these things
11 came along one at a time.

12 The other program has already been
13 approved. It went through a legal process. It
14 didn't have to go through the Energy Commission.
15 We received permission and been actually directed
16 to do that, be in violation of the law if we don't
17 do it. So we're out there essentially putting
18 selected catalytic reduction on machines that are
19 going to stay, hopefully for the next ten or so
20 years.

21 So there will be continuous construction
22 going on under different programs, and essentially
23 what, as I understand the Commission's authority
24 is that we can't make any permanent change until
25 after we have their permission and the appellant

1 period has run. The legal standard is that you
2 can't do any appurtenant work other than trenching
3 for seismic activities prior to their approval for
4 this project.

5 So what we -- if we're approved, get
6 approval, 30 day appeal period, reconsideration
7 period, appeal period, and then rubbing would
8 start. Rubbing is, of course, the actual activity
9 for our project in the site area, if in fact it
10 needs --

11 HEARING OFFICER SHEAN: Okay. I'd just
12 make it very clear that they cannot commence
13 construction of the project until it's been
14 approved. What meaning this particular activity
15 has, I don't know. But at least in terms of the
16 construction of the project, which begins with
17 some onsite either ground disturbance or
18 disturbance of vegetation, things such as that,
19 they cannot do that without a license.

20 MR. CHAPMAN: Demolition of the existing
21 structures won't -- doesn't qualify as ground
22 disturbance and such?

23 MR. VARANINI: I can tell you that legal
24 -- from our position, as a legal matter, it
25 depends what -- what is going on with the

1 demolition. For example, if tanks are coming out
2 that are going to come out anyway, those -- those
3 are approved by another governmental body, and
4 that kind of work goes on -- I don't know that's
5 -- that's the kind of work that can go on, because
6 it's been reviewed and approved by a governmental
7 review agency other than the Commission. The
8 reason for that is there are machines out there,
9 the power plant's out there, that were never
10 jurisdictional to the Energy Commission. They
11 were essentially grandfathered away from the
12 Commission's jurisdiction, and the Commission has
13 jurisdiction over the new machines.

14 MR. CHAPMAN: Just informational. That
15 other picture is just what it did look like before
16 they tore it down.

17 MS. DAVIS: Sorry, I didn't catch. What
18 -- what specifically was torn down?

19 MR. CHAPMAN: It appears to be the whole
20 awning out over the patio.

21 HEARING OFFICER SHEAN: Yeah. I -- I
22 don't know what to ascribe to that. It's --

23 MR. CHAPMAN: Well, it's just a
24 continual -- it's another -- another way of
25 degrading the existing facility to a point that

1 it's not usable.

2 HEARING OFFICER SHEAN: Okay.

3 All right. Why don't, as we indicated,
4 commence with Cultural Resources, and we can go
5 through that. I'm always amazed that the Cultural
6 Resources probably has more conditions than any
7 other topic than Air Quality, and it's all related
8 to something that we don't know whether it exists
9 or not.

10 MS. DAVIS: I would just like to remind
11 everyone that if -- if necessary, we can discuss
12 Cultural Resources again Tuesday night, when the
13 Staff person can be available. But we'll just see
14 if there's any issues that require that Staff
15 person to be there.

16 HEARING OFFICER SHEAN: Do you want to
17 do anything with any of these conditions, other
18 than the date changes?

19 MR. SHILEIKIS: I think, you know, is
20 now the time to talk about --

21 HEARING OFFICER SHEAN: You bet.

22 MR. SHILEIKIS: -- changes? Okay.
23 Because I think there are some -- if this is the
24 time to discuss some of the timelines --

25 HEARING OFFICER SHEAN: Yes.

1 MR. SHILEIKIS: -- then I'd say there --
2 we should probably bring up, because Cultural, as
3 you said, has a fair number of conditions. And
4 maybe we could just go down the list here real
5 quickly. I kind highlighted them in the book, but
6 -- under -- starting with CULTURAL Number 1,
7 there's a 90-day requirement, at least 90 days
8 prior to the start of project related vegetation
9 clearance the name and the statement of
10 qualifications for the Cultural Resources monitor
11 be provided.

12 We're -- if the intent is to start
13 construction sometime between June and July, we're
14 already within that 90-day period. That's an
15 example of one.

16 Cultural Resources 2 --

17 MR. VARANINI: Let me interrupt you on
18 that, Dale.

19 MR. SHILEIKIS: Sure.

20 MR. VARANINI: I'd like to actually try
21 to have kind of a dual track here. Some of these
22 things, we can help in having this case, I think
23 we can help re-craft the process. It just -- it
24 just seems to me we need things changed, but there
25 can't be thousands of people who meet this

1 qualification. And the Commission has qualified
2 some number of people, and I would suggest that
3 the Commission Staff and the Commission set up a
4 system to pre-qualify people, so that you could
5 have 35 professors from the Cal State system, and
6 50 from UC, and perhaps a thousand outside
7 consultants pre-qualified. That's done an awful
8 lot in local government, and if you want help, I
9 think if you want to think of that each time we go
10 through a siting proceeding on the -- this
11 material, that we can think about how to do it
12 better or faster.

13 It seems to me it'd be almost -- I think
14 you could pass the bar during the 90 day period.
15 And so the notion of having huge lead time to
16 identify an individual and their qualifications,
17 and have them process and have them -- in a world
18 where we have two of these every five years,
19 works. But it doesn't work in this world.

20 So I would suggest that just as a
21 citizen, interested citizen, that -- at least
22 nominate some changes to the process that might be
23 very helpful, given the record of -- of this
24 particular Hearing Officer and Committee and
25 things, I think that it might be volunteering too

1 much, but I don't think so.

2 HEARING OFFICER SHEAN: All right. But
3 in any event, you want that reduced to something
4 on the order of 45 to 60 days, or something.

5 MR. SHILEIKIS: Yeah. I just --

6 HEARING OFFICER SHEAN: You -- you
7 already kind of have it in mind who you would
8 select for some of these things?

9 MR. SHILEIKIS: Probably don't, I don't
10 think. I don't think it's that hard to do. There
11 are -- maybe a suggestion up front, because it'll
12 probably in every -- all of the subjects, a number
13 of these, Cultural being one that has quite a few.
14 But in the conditions in a couple of the subject,
15 there are -- there is language, for instance, like
16 from GEO-1, where it says at least 30 days, and
17 then parenthetically, or a lesser number of days
18 mutually agreed to by the project owner and the
19 chief building official.

20 Perhaps we can consider some kind of
21 blanket statement like that which gives some
22 flexibility both for the CEC and the Applicant so
23 there is -- there's not such a strict cutoff
24 point.

25 MS. DeCARLO: Would you be satisfied

1 with the time periods as they stand now, with the
2 inclusion of that language, or would you also want
3 to change --

4 MR. SHILEIKIS: Actually, I think that's
5 an excellent idea.

6 MS. DeCARLO: So keep the time periods,
7 but just include the or lesser time?

8 MR. SHILEIKIS: What do you like, Gene?

9 MR. VARANINI: No.

10 MR. SHILEIKIS: No? Okay.

11 MR. VARANINI: It's a good idea in a
12 different world. I mean, if -- if everything --
13 if we had time, it would work. But I would like
14 to have the dates in so that there's an agreed
15 upon -- what that does is it gives us a somewhat
16 defined -- that puts more pressure on us and
17 pressure on you. And at that point if there's no
18 agreement -- we're going to try -- we will do it
19 in this timeframe. If it's a verification, you
20 can change it anyway. I mean, in that sense. So
21 if we did something that just required more time,
22 then I'd like -- I'd like to have it more focused
23 on the fact that the period pass from approval of
24 construction to start of construction are going to
25 be very, very fast.

1 HEARING OFFICER SHEAN: Why don't we --
2 I understand that. I can go through these and
3 read them, and figure out the ones that are the
4 pre-construction ones. Are there substantive
5 problems with any of these?

6 MR. SHILEIKIS: No, I think it's all a
7 matter of timing.

8 HEARING OFFICER SHEAN: Yes, sir. Given
9 our circumstances -- well, do you want to extend
10 that out? If it's important enough for you to
11 say, it's important enough that we record it.

12 If you don't mind, identify yourself and
13 --

14 MR. WORRELL: My name is Charles
15 Worrell, a resident of Antioch, California, a
16 member of Sportsman Incorporated, a member of
17 Striped Bass, member of Driftwood Yacht Club. My
18 life is on the river.

19 I don't understand what you're talking
20 about, I'm very sorry. I think you're talking
21 about the 90-day period of appointing a --

22 HEARING OFFICER SHEAN: Cultural
23 Resource specialist.

24 MR. WORRELL: Yeah, right. Is that what
25 you're -- what you're saying?

1 HEARING OFFICER SHEAN: Yes.

2 MR. WORRELL: And -- and you don't want
3 to start the 90-day period after certification?

4 MR. VARANINI: No, we want -- we want to
5 make the nomination right away. We want to say
6 we're going to pick Professor Jones to do this
7 work, and here's his resume, and --

8 MR. WORRELL: And he'll be ready in lieu
9 when -- when the permit is -- if the permit is
10 issued, and he can start right away and we don't
11 have to wait 90 days.

12 MR. VARANINI: They have -- yeah, he has
13 to be acceptable to Staff.

14 HEARING OFFICER SHEAN: That's the
15 general idea, yes.

16 MR. WORRELL: I'm sorry. I -- lawyers
17 start talking and they -- they kind of lose car
18 mechanics and -- thank you.

19 HEARING OFFICER SHEAN: Okay. Yeah,
20 that's it. In a nutshell, that's it.

21 So, okay. Anything of a substantive
22 nature, then, on Cultural.

23 MS. DeCARLO: So, I'm sorry, do you have
24 any specific timelines you'd like to see on those?
25 Just so we can take this back with Staff and have

1 an answer for you by Tuesday.

2 MR. SHILEIKIS: Okay. I think maybe for
3 just to consider that we're at the 60-day point,
4 essentially next week. So I think it's going to
5 have to be less than that. Probably, for
6 practical purposes, I -- if we had to throw out a
7 number, I would say probably 30 days, if -- if
8 Staff can accept that, would be realistic, just
9 because of where we're at with timing here.

10 MS. DeCARLO: Okay.

11 HEARING OFFICER SHEAN: All right. And
12 that essentially would apply to, if I'm looking at
13 this correctly, one, two, three, four, and six.

14 MR. SHILEIKIS: Yes.

15 HEARING OFFICER SHEAN: Okay.

16 MR. CHAPMAN: If all -- not just in the
17 Cultural question, but when you look at every --
18 every requirement of the -- each individual
19 chapter, if all of that came pouring in within a
20 30-day period, is it going to get covered?

21 HEARING OFFICER SHEAN: Well, assuming
22 the Applicant project owner can get the
23 information to the Commission, it can get covered
24 in 30 days. Because essentially what the
25 Commission Staff is doing is verifying the

1 qualifications of the person who in this instance
2 would be the Cultural Resource specialist. It'll
3 happen with the Biologist, it'll happen with the
4 Geologist, and the Geological Engineer, and folks
5 like that. And I think we're basically looking
6 for proper accreditation or licensing within the
7 State of California, and that -- that can be
8 accomplished in that timeframe.

9 MR. CHAPMAN: So right now we're just
10 talking about the appointments? That's -- we're
11 just talking about that issue?

12 MR. VARANINI: So far.

13 HEARING OFFICER SHEAN: So far we're
14 talking -- so far we're talking about the
15 designation.

16 MR. CHAPMAN: Okay. But we're
17 anticipating talking about this on basically all
18 levels, though, from what I understood from --
19 from Gene.

20 MR. VARANINI: On many levels, that's
21 correct. Yeah. What -- let me, if I could take a
22 minute to tell you what our philosophy is, and
23 what it has been in other situations that have
24 been approved by the Commission.

25 Effectively, what -- what the Commission

1 does is the Commission makes it decision, and it
2 sets up a process where there are conditions and
3 verifications. The conditions have to be carried
4 out in -- almost verbatim, and if you change a
5 condition substantially, you have to go back to
6 the Commission and get that approved.

7 The verification, which is a part of
8 really what's -- what's the approval process and
9 operation, is essentially a combination of the
10 Energy Commission compliance officer and his staff
11 and the county or city building official and his
12 or her staff.

13 The first thing that happens is there
14 aren't enough human beings in the world to -- or
15 on staff anywhere, to handle the flow of paper in
16 these types of projects, even if there's only one
17 in the system. So generally, the Commission
18 delegates part of its duties to the building
19 officer, and the building officer will come back
20 to us, and if we want things done in a timely
21 manner, we have to pay for it.

22 And so the building officer then will
23 hire a plan checker, additional plan checkers,
24 consultants, and advisors so there is a stream of
25 folks who are set up to receive different paper

1 flows. And if you think about it as a critical
2 path, it -- the activities are moving in parallel
3 with different teams of people reviewing different
4 parts of the critical path events.

5 In order to expedite it, you have to put
6 more people on -- more reviewers on it, and you
7 have to get an agreement under contract that they
8 can do it in these timeframes, and the Commission
9 has to approve and maintain surveillance and
10 management of that whole process.

11 And as you're probably aware, there were
12 some problems out here on another project, and the
13 Commission was right on top of it very, very
14 quickly in a very thorough, policing action. So
15 we're aware of -- that folks are reading this
16 stuff, they're out in the field, they're observing
17 what's going on, and they've seen a lot of power
18 plants, and it's pretty hard to really horse
19 around with one of these things. But I -- I think
20 that's, you know, in layman's, sort of a quick and
21 dirty approach, what we think will go on, and
22 that's the way it's gone on as far as I know in 35
23 plants that I've been associated with.

24 MS. DeCARLO: And also, regardless of
25 the timelines given, Applicant will not be able to

1 proceed to the next stage of construction until
2 Staff has been able to verify that the conditions
3 have been complied with. The timelines are merely
4 there to give the Applicant some sort of sense if
5 you provide us with this information, then we can
6 pretty much guarantee we'll be able to review it
7 within the timeline.

8 MR. CHAPMAN: So is the change in the --
9 a change in the requested timeline, and this is --
10 this is where my question is going to, is that --
11 are they asking to shrink the amount of time that
12 you have to review it? Is that what they're
13 asking for?

14 MS. DeCARLO: Pretty much. But we will
15 not agree to that if that compromises our ability
16 to thoroughly review.

17 MR. CHAPMAN: And I think where this is
18 -- the understanding of the pressure on the --
19 because of the multiple projects, I understand
20 where -- where the Applicant can more or less buy
21 the acceleration. I don't understand how you can
22 fund the acceleration at the -- at the Energy
23 Commission.

24 MR. VARANINI: We basically -- we
25 basically pay for contract employees or

1 independent contractors to work for the county
2 building officer.

3 HEARING OFFICER SHEAN: Okay. I think
4 you were referring to the Energy Commission
5 itself.

6 MR. CHAPMAN: Right. I mean, as far as
7 you being able to juggle and fight your way
8 through it, based on the multiple projects that
9 you're faced with, how does this -- his proposal,
10 I understand his proposal, but how does that help
11 you get your way through it?

12 HEARING OFFICER SHEAN: Well, to some
13 degree, if it's a CBO issue, it helps by virtue of
14 the fact that the CBO is able to more thoroughly
15 do their job, and do it in a more accelerated
16 fashion.

17 When things are not CBO that are done by
18 the Commission, we have both an expanding staff,
19 as well as contract funds which are taking care
20 of, or being utilized to add to the resources of
21 the Commission on an as needed basis. So I'm
22 confident that the Commission, first of all, is
23 acting less like a standard bureaucracy, even
24 before this crunch has occurred, because we're
25 trying to move at the -- more nearly at the pace

1 that business in the real world moves, and not at
2 a bureaucratic pace.

3 The fact that this is -- also we have
4 had this added energy emergency thrust upon us,
5 and the circumstances with that, basically has
6 added dollars to add resources. And that's where
7 we are today.

8 MR. CHAPMAN: Good. Don't lay them on
9 my desk. Lay them on somebody else's.

10 HEARING OFFICER SHEAN: All right. And,
11 I mean, we're not saving electricity at night by
12 virtue of not having the lights on so people can
13 do their work. I mean, the Commission, on the
14 whole, is working somewhere between six and seven
15 days a week and ten to twelve hours a day.

16 So, all right. Nothing substantive,
17 then, on Cultural Resources. All right.

18 Does any party present wish to have that
19 matter heard during the Evidentiary Hearings?

20 MR. CHAPMAN: I've got -- I've got some
21 questions under Cultural Resources. They're --
22 and the most -- the most pressing question that I
23 have is trying to understand the conclusion with
24 regards to the Sausalito. The -- what I'm
25 wondering is whether this definitively specifies

1 that the Sausalito is considered a historical
2 site.

3 HEARING OFFICER SHEAN: My impression --

4 MR. CHAPMAN: That's on page 325, is --
5 is where they indicate that it's recognized for
6 the -- for the purposes of this report. And if
7 it's recognized under Cultural Resources, then
8 does that mean it's recognized in other
9 specialties as a -- as a historical site?

10 HEARING OFFICER SHEAN: My reading of
11 this is that they could not make the call as to
12 whether it was or was not, but that for the
13 purposes of a conservative study they would assume
14 that it was. So no designation has been made, by
15 my reading of the Staff's analysis, with regard to
16 the Sausalito.

17 MS. DeCARLO: And that's correct. We
18 just assumed for the purposes of a conservative
19 analysis that it was adequate for a listing.

20 HEARING OFFICER SHEAN: But clearly we
21 don't have the authority to either list it or do
22 anything more than attempt to conduct the Cultural
23 Resource review, and, as I indicated, just for the
24 purpose of making it the most conservative study,
25 they assumed that it had historical significance,

1 and then concluded, as they concluded later, on
2 page 329, that the proposed project would not
3 cause a significant -- I'm sorry, a substantial
4 adverse change, so no mitigation measures are
5 needed for the Sausalito.

6 MR. CHAPMAN: There -- and the -- the
7 reason that I'm asking for the clarification is --
8 specifically goes to when you get into the noise
9 -- noise vibration question, there -- the
10 Applicant had responded to one of the data
11 requests with a table of allowed vibration rates,
12 and the one rate that they've discussed in their
13 data response was the vibration rate of .1. Okay.
14 There -- so if -- if you use the Cultural
15 Resources to establish it as a historical site,
16 then noise will need to work based upon that
17 information. That's where the question leads to.

18 HEARING OFFICER SHEAN: Okay. You just
19 want a correspondence, then, if it was used as a
20 conservative basis in Cultural, that it be used in
21 Noise.

22 MR. CHAPMAN: Right.

23 HEARING OFFICER SHEAN: Okay.

24 MS. DAVIS: Were there any other subject
25 areas that you thought that the Cultural Resources

1 designation would -- would affect?

2 MR. CHAPMAN: Well, the -- the thing
3 that I'm still trying to find is -- is who covers
4 recreational use and the effects upon that? Is
5 that a Cultural Resources, is it a Socioeconomic,
6 is that a Land Use? What -- who's going to tackle
7 that question?

8 MS. DAVIS: Are you talking about
9 recreation in the vicinity and that being affected
10 by -- by construction --

11 MR. CHAPMAN: Right. There -- on -- in
12 Cultural Resources they give a description of the
13 -- of the site, on page 313. And they talk about
14 this -- under Project Vicinity Description, they
15 talk about a mix of agricultural and industrial
16 development characteristics in the vicinity
17 immediately surrounding the plant. They
18 completely leave out the discussion, or the
19 comment with regards to the recreational use that
20 surrounds the plant.

21 MS. DAVIS: It's probably a
22 Socioeconomics issue, more -- more than any other.
23 And we'll be discussing that a little bit later
24 this morning.

25 MR. CHAPMAN: Okay. That's -- that was

1 -- those were my questions in this area.

2 HEARING OFFICER SHEAN: Okay. We'll
3 move on then to Geology and Paleontology, which is
4 on page 427.

5 MS. DeCARLO: Garret, if -- I'm sorry.
6 If I could really quickly, about cultural, we
7 would like to reserve a determination of whether
8 this would be litigated or not until after we get
9 a chance to discuss this with Staff and
10 management. Can we get back to you on that for
11 Tuesday, for the timelines?

12 HEARING OFFICER SHEAN: Sure.
13 Okay. Geology, then. Okay, why don't
14 we -- first of all, are there some timeline -- I
15 don't think there are.

16 MR. SHILEIKIS: I think there are more
17 timeline issues under Paleontology, which is --
18 just follows the Geology conditions. They're
19 fairly similar to the Cultural Resources
20 timelines.

21 HEARING OFFICER SHEAN: Okay. And that
22 appears to be for Paleontology 1, 2, and 3.

23 MS. DeCARLO: For 3, are you satisfied
24 with the 30 days?

25 MR. SHILEIKIS: I think so, yeah.

1 MS. DeCARLO: Okay.

2 HEARING OFFICER SHEAN: Okay. Are there
3 any substantive comments on either Geology or
4 Paleontology from the Applicant?

5 Anything from you, Mr. Chapman?

6 MR. CHAPMAN: Well, the question that I
7 had that comes under this goes back to this noise
8 and vibration thing of whether the Geology
9 specialist would be able to give us input as to --
10 only in Geology do they talk about the type of
11 soil and things that's in the area. And the type
12 of soil is going to directly affect the vibration
13 rate with regards to the pile driving. There -- I
14 think the Geology specialist needs to address
15 whether -- whether you're going to be able to
16 achieve the -- the requested vibration rates,
17 because they're -- they're going to be the people
18 that can -- or so far, they're the ones that've
19 identified the soil types, which would directly
20 affect the vibration issue.

21 I -- I mean, am I -- Dale, is that -- am
22 I thinking right, that, you know, the soil type
23 affects that vibration rate?

24 MR. SHILEIKIS: Well, I'll start out
25 first that I'm not -- I'm not a soil specialist,

1 nor am I a geologist. I'll say yes, generally
2 yes. I think maybe just keep in mind that the way
3 that the vibration analysis was done was making an
4 assumption that the worst case pile driving
5 equipment was going to be used, which was an
6 impact hammer, which creates the -- the greatest
7 degree of vibration. And that's typically what's
8 done in most impact analyses, is you always look
9 at it conservatively and try to look at it from a
10 worst case condition. And the predicted vibration
11 levels were all based on, you know, using that
12 kind of equipment.

13 There hasn't been any decision of what
14 kind of equipment been made. In fact, probably in
15 a little while here, Mirant's construction
16 engineer will be here, and can perhaps address the
17 equipment issue a little more specifically if
18 you'd like to do that.

19 I also think that this -- actually this
20 subject is more under -- under the Soils section,
21 rather than the Geology section.

22 MS. DAVIS: Actually, we put it under
23 Noise.

24 MR. SHILEIKIS: Oh, actually it's under
25 Noise. That's right. Which is for tomorrow, as

1 well. Yeah.

2 MS. DAVIS: Because vibration, noise and
3 vibration --

4 MR. SHILEIKIS: It is related to Soils,
5 actually. That's true. But I'm going to be, you
6 know, reaching the boundaries of my particular
7 expertise to start talking about, you know, how,
8 you know, vibration propagates through the ground.
9 I suggest maybe if we could put this off until,
10 you know, that subject comes up, would be
11 appropriate.

12 MS. DAVIS: Right.

13 HEARING OFFICER SHEAN: We'll handle it
14 under Noise.

15 MS. DAVIS: I'll just add that in the
16 data response that we received from the Applicant
17 it wasn't really clear whether the soils were
18 taken into account, and I don't know if they -- if
19 it matters that much or not in the analysis, if
20 that's something that we should discuss.

21 HEARING OFFICER SHEAN: Okay. Well, as
22 long as we cover it at some point. Okay.

23 Anything further on either of the rest
24 of the Geology or the Paleontology, then?

25 All right. Since no one is requesting

1 we hear that, we will take that by declaration.

2 Now we move on to Land Use, which is on
3 page 195.

4 MS. DAVIS: We have our consultant here.
5 His name is Jon Davidson. He'll be available to
6 answer any questions.

7 HEARING OFFICER SHEAN: I actually did
8 have a question with respect to LAND-2, which
9 includes the compliance with the sign requirements
10 for the Contra Costa zoning ordinance. And my
11 question is whether or not -- I can understand the
12 permanent sign requirement. But is it intended
13 that the construction only sign requirement might
14 even be -- get down to the level of a two by four
15 that had something spray painted on it that said
16 particular people were to go this direction on any
17 given day? Is that -- I'm trying to understand
18 the nature of -- so that people will basically --
19 construction, deliveries, and things like that,
20 know where they're supposed to go.

21 MR. DAVIDSON: Correct. That's
22 typically the type of signage that that part of a
23 sign ordinance addresses.

24 HEARING OFFICER SHEAN: And how do you
25 want them to cover those sorts of things? What --

1 what are they to do on a day-to-day basis with
2 regard to that kind of a construction related
3 sign? As you understand the ordinance.

4 MR. DAVIDSON: I have to check the
5 specifics of the ordinance, but the -- the basic
6 requirements are somewhat similar to a permanent
7 sign. I mean, there are locational criteria where
8 a sign can and cannot be located. They don't want
9 it to affect lines of sight for traffic movement,
10 and so forth. And usually size of the sign. You
11 know, is there sign size limitations, things like
12 that.

13 HEARING OFFICER SHEAN: Okay. Do you
14 have a view as to whether this is going to be
15 particularly restrictive of the activities you've
16 got, or everything's all right with you? It's
17 fine with you. Okay.

18 And if I understand the rest of the
19 analysis, it is that the county's plan and zoning
20 ordinances apply, not the city's, even though the
21 city is within the sphere of influence, but that
22 generally, even if the city had been the
23 jurisdictional body, that their area designations
24 are of a similar industrial nature.

25 MR. DAVIDSON: Yes, they are, actually.

1 And because the -- the site is within the sphere
2 of influence of the City of Antioch, there's -- I
3 guess you'd call it an advisory relationship
4 between the city and the county. The city could
5 request that the county advise them of proposals
6 that they were acting on, and -- and the city
7 would have an opportunity to provide input to the
8 county that they would use in making their
9 determination of whether a application should be
10 approved or not, or modified.

11 HEARING OFFICER SHEAN: Sure. It's a
12 we're so close, don't forget us kind of deal.

13 MR. DAVIDSON: Right.

14 HEARING OFFICER SHEAN: Anything from
15 you, Mr. Chapman, on this one?

16 MR. CHAPMAN: Yes. There -- under -- on
17 page 198, your site vicinity description. I'm
18 really concerned that -- after going through the
19 PSA process and workshops and things, that you
20 still -- you still don't have the proper -- the --
21 the part of the Contra Costa Power Plant that's
22 being proposed to be used identified for what it
23 is. You still haven't recognized that and -- and
24 discussed the fact that they're -- they're using a
25 recreation -- a former recreation use piece of

1 property and that it also, that part of the plant
2 has been labeled non-operational.

3 Now, you can find in -- in the Phase 1
4 Staff site assessment, in the -- in the AFC, it
5 labels that both under in written description, on
6 page 33, and then in Figure 3-5A, it identifies
7 that again, that -- that this -- that over half of
8 this site that's proposed has been -- been labeled
9 as non-operational and is part of a recreational
10 facility.

11 MR. DAVIDSON: Yeah. It certainly
12 could've been noted in the Staff Assessment. It
13 didn't seem particularly relevant to the type of
14 analysis we were doing, in that we were primarily
15 looking for whether the project is consistent with
16 local planning designations and zoning
17 regulations, and then there's also a -- there's a
18 criteria that we examine for whether a project
19 could physically divide an established community.
20 And there's a general issue of compatibility that
21 is addressed, based on the findings of other
22 analyses in the Staff Assessment, such as noise
23 and dust, and so forth.

24 So I -- it's not that we meant to ignore
25 that. It just wasn't, you know, directly germane

1 to the type of analysis we were doing.

2 MR. VARANINI: Yeah, I think part of our
3 attitude on that is it's really descriptive,
4 rather than restrictive. If you think about it.
5 I mean, if -- lots and lots of property for many
6 years has been held in what they call held --
7 property held in future use, and many of the sites
8 in California have employee recreational
9 facilities and some other facilities that made a
10 lot of sense to put on the property, until you put
11 it into ultimate industrial use.

12 And the -- the notion that if you did
13 that that you would then condemn yourself to
14 dedication, public dedication, kind of flies in
15 the face of, you know, standard law. I mean, it's
16 -- it may be, you know, aggravating if somebody
17 had something and they used, and they change it.
18 But they have the right to do that, and in most
19 cases they've actually had somewhere, someplace, a
20 plan to do that. And they had to justify it that
21 way in order to get your money to buy the land in
22 the first place. Originally, they were using your
23 -- they used debt, and then they paid it back with
24 your rates.

25 So that's -- that's what's going -- from

1 our perspective that's what's going on. It may
2 not be pleasing to you, but I don't think there's
3 a -- necessarily a mechanism, you know, a legal
4 mechanism that I'm aware of that would come into
5 play, I mean, other than you had a descriptive
6 use, but it's not restrictive use.

7 MR. CHAPMAN: There -- with regards to
8 the restrictive uses, when -- when you were
9 looking at the compliance with the LORS, did you
10 consult with PUC or FERC or Contra Costa County in
11 the discussion of what conditions and permitting
12 requirements were put upon the existing plant when
13 it was built, that would have carved out these
14 land buffers that are referred to quite heavily in
15 -- in other documents?

16 MR. DAVIDSON: We consulted with the
17 county, but we did not ask in that specific issue.

18 MR. CHAPMAN: Who -- who licensed the
19 existing plant?

20 MR. DAVIDSON: You know, I'm not
21 absolutely sure.

22 HEARING OFFICER SHEAN: It would've been
23 the Public Utilities Commission, I'm sure.

24 MR. CHAPMAN: Okay. And they would have
25 the conditions and -- and the mitigation measures

1 designed at the time of that construction with --
2 with the -- with that requirement. There -- I'll
3 refer you to the -- when PG&E sold this plant, or
4 was proposing to sell it, an environmental impact
5 report was done then. And throughout that
6 environmental impact report, and just that -- I
7 believe it's Case 98008 -- one second, me confirm
8 that -- yeah, 98-01008, that's a PUC case number.

9 In that, as part of that environmental
10 impact report, I'll repeat what I just said, is
11 that they've used, throughout that report, they
12 used the existing land buffers to find less than
13 significant impacts throughout the report. There
14 -- that, along with the conditions of
15 construction, I think need to be included in this
16 to -- to show the findings that they're building
17 on property that has been carved out, and was
18 carved out for the public benefit and protection
19 from -- from this plant facility.

20 MR. VARANINI: I think our --

21 HEARING OFFICER SHEAN: Let me just try
22 to get some information here.

23 MR. VARANINI: Okay.

24 HEARING OFFICER SHEAN: So do I
25 understand where you're taking this is that you

1 have either some conditions of the earlier
2 certification by the PUC, or some other --
3 something that indicates that this was, either as
4 a condition for the construction of the existing
5 units --

6 MS. DAVIS: Or sale --

7 HEARING OFFICER SHEAN: -- that question

8 --

9 MS. DAVIS: Or for sale, right?

10 HEARING OFFICER SHEAN: -- first.

11 Follow me? Just go one at a time.

12 Are there conditions with regard to the
13 initial construction that would leave this area as
14 a -- as a buffer?

15 MR. CHAPMAN: It's been described as
16 such, yes.

17 HEARING OFFICER SHEAN: Okay. All
18 right. But to the extent, just so we have it
19 clear, is that the description of this as a buffer
20 area, but for the construction it wasn't required
21 to be a buffer area. And now, as to the -- is --
22 is that correct?

23 MR. CHAPMAN: All -- all of the -- all
24 of the documents and things that -- that have been
25 given with regards to the existing plant, all

1 label this area non-operational. Now, the areas,
2 there's other areas in the -- in the plant that
3 don't have facility on it, that are not labeled as
4 non-operational. The only areas that you find in
5 that existing plant that are marked non-
6 operational are all the borders. Either the
7 borders to the non -- anything that was non-
8 industrial use, was given a border of -- of some
9 substantial thousand feet or more.

10 HEARING OFFICER SHEAN: Okay. And so
11 that applied to, as you're describing it, the
12 eastern side of the -- of the facility; right?

13 MR. CHAPMAN: The eastern and the
14 southern. There -- because you go across Wilbur,
15 and now there's a whole plot of land over there
16 that is leased out for a vineyard use. It's also
17 marked as non-operational.

18 MS. DAVIS: Which document specifically
19 -- you mentioned what I believe was the
20 divestiture EIR?

21 MR. CHAPMAN: Yes.

22 MS. DAVIS: And was there another
23 document, as well?

24 MR. CHAPMAN: Well, the documents that
25 -- that have been presented here would be the --

1 the site assessment, Phase 1 site assessment.

2 HEARING OFFICER SHEAN: And is this
3 largely a descriptive characterization, or is it a
4 prescriptive? I mean, that it's -- that it is to
5 be non-operation. Do -- do you understand the
6 distinction I'm trying to make, is -- is it merely
7 being described as this, or do you think it's
8 being designated and prescribed that it be --

9 MR. CHAPMAN: Well, given the -- given
10 the requirements that you'll find in -- in general
11 requirements of both FERC and -- and PUC, that
12 recreation areas be included as part of a project
13 anytime -- and by the way, also the California
14 Energy Commission also has the same requirement
15 for public use areas to be provided when you're --
16 when you're building a plant associated with --
17 with the water -- a major body of water or the --
18 or a recreational use area.

19 HEARING OFFICER SHEAN: Okay. So --

20 MS. DAVIS: I'd like to answer your
21 question, Garret. The Phase 1 Site Assessment, in
22 -- in my opinion, I did look at it after speaking
23 with Mr. Chapman, and in that one we used -- see
24 more descriptive, as opposed to prescriptive. But
25 the divestiture EIR, I don't know.

1 MR. VARANINI: It is my impression on
2 the divestiture, all the divestiture work, that
3 the PUC's conclusion was that what was being
4 transferred were the assets that were being
5 purchased. They didn't do a futures analysis.
6 They took a look at the assets that were being
7 transferred, and they effectively said everywhere
8 that they would run the same -- effectively,
9 they'd run the same and they would come out the
10 same. In other words, there was no necessary
11 change within the operational envelope driven by
12 the purchase.

13 So if you think about it, it's -- it was
14 a change of command ceremony between PG&E and
15 Southern, from their perspective, and that's it.
16 And the notion of well, maybe Southern will run
17 them harder, or run them less, cycle them, or do
18 this or do that, I think was all subsumed into
19 what's the worst case. And the worst case was
20 already authorized. Run them all -- all out, all
21 the time. And -- and it might be tautological if
22 you actually go in and look. It's a -- it's a
23 logic sequence rather than analytical fact, but
24 that's what they did.

25 And so it seems to me you have to start

1 with, if my description of it's even reasonably
2 accurate, there's nothing that was put on the
3 plants. They were simply transferred as is, as
4 regulated, and they then went to a different
5 ownership. And at that point, if you were going
6 to do something different, you had to go either to
7 the Energy Commission or to local government and
8 they would take up those issues at the time that
9 the change was forthcoming, because in fact, the
10 change in theory could've been infinite. You
11 couldn't predict.

12 And then it became speculation under
13 another CEQA doctrine, and they stayed right with
14 the very narrow set of facts, remember that they
15 wanted to liquidate these plants. I mean, the
16 whole policy of the government and the utility was
17 get rid of these things, so they just took the
18 worst case, looked at it, assumed similar
19 operation, and when.

20 There -- if I remember right, there were
21 virtually no conditions anywhere. It was one of
22 the most interesting analytical exercises I've
23 ever seen, that you could go through it and come
24 out at the other end and say well, there's really
25 nothing to it. We determined, after analyzing six

1 plants all across the state, that we don't have to
2 put any conditions of -- environmental conditions
3 on it for any reason because of the universal
4 theory that their worst case is already in
5 operation, or permitted in operation.

6 That's my understanding of it. If --
7 and we haven't researched this because, to be
8 perfectly frank with you, there's an infinite
9 number of things to research. But if you, you
10 know, if it becomes an issue we'd be more than
11 happy to, you know, to facilitate the record with
12 -- with some research on it. And, of course, if
13 we're directed to, we'll snap right to it and do
14 it.

15 HEARING OFFICER SHEAN: Well, that's
16 what I want to try to find out.

17 MR. CHAPMAN: You -- you referred to
18 what conditions came with the purchase of the
19 plant. Well, that is addressed, you can go to
20 page S5 of the executive summary of -- of the EIR,
21 and they talk about that in that they say okay,
22 all facilities, equipment, permits, land interests
23 and other entitlements and encumbrances for the
24 operation of the plants.

25 Well, if -- if a land buffer was

1 required for the operation of that plant, then
2 it's still required, even though you own it now,
3 rather than PG&E owns it. And --

4 MR. VARANINI: Well, it would've been
5 disclosed if it was required. I mean, if there's
6 -- if we can't find anything in any disclosure --

7 MR. CHAPMAN: Well, I -- that part, I
8 can't -- I mean, that's between you and PG&E.
9 That's not --

10 MR. VARANINI: It's between -- and the
11 law.

12 MR. CHAPMAN: Right. I understand that.

13 HEARING OFFICER SHEAN: Well, let me
14 just -- let's just -- what I need to do is to find
15 out, for the purposes of how we're going to
16 proceed when we get to that phase of the
17 proceeding, what is it you want to do with the
18 information you think you have. Is it that either
19 an aspect of the LORS that the project has to meet
20 has not been met? Or that -- that there is some
21 -- a definitive restriction upon the development
22 of the particular plot that the site is on, is
23 that --

24 MR. CHAPMAN: That's -- that's my belief
25 and claim, yes. There -- as Mr. Davidson

1 indicated, he only talked to the county. Well,
2 there's -- there's a lot more agencies that have
3 their thumb on this property than just the county.
4 And -- and I'll question there his -- his
5 investigation with the county, even, in that they
6 have this area carved out as a separate design
7 area of the plant, separate use area. You go to
8 the -- you go to their zoning maps, and they have
9 -- it's not zoned different, I'll give you that.

10 We're not -- and the thing that -- I
11 can't argue a zoning thing, it's pretty obviously
12 what is zoned. But what the land use historically
13 has been, and is designed to be, is a recreational
14 area. The county even acknowledges that in their
15 -- in their maps. And --

16 MS. DAVIS: Do you have any specific
17 maps?

18 MR. CHAPMAN: Book 51, page 03. And
19 that comes out of the community -- community
20 development department, the Planning Department,
21 basically.

22 MR. DAVIDSON: It looks like an
23 assessor's parcel map.

24 MR. CHAPMAN: Yes. That's been marked
25 up with permits and -- and such as that.

1 The -- the question about descriptive or
2 prescriptive. There -- I tried to work my way
3 through that, and I was interested, I ended up
4 going to the dictionary and looking at non-
5 operational. And the second definition of
6 operational is that can be used or operated.
7 There -- and so if you put the "non" on that, it
8 would mean it cannot be used or operated.

9 And I'll go back to the plot map in
10 that. There are other areas in the plant that
11 don't have facility on them, that are not marked
12 non-operational. This area is.

13 HEARING OFFICER SHEAN: Okay. Well, we
14 don't need to get the substantive argument to the
15 point of closure. We just need to know whether or
16 not that's what you would like to present when we
17 get to the opportunity to do that, and I assume
18 that's what you're -- what you're advocating here
19 for our purposes today. Right?

20 MR. CHAPMAN: Yeah. There -- the other
21 -- the other issue that I wanted to ask the author
22 about here -- Mr. Davidson, I'm sorry -- is when
23 you were considering the compliance with county
24 policies, or when you're considering what your
25 final conclusion is here, how -- how does your

1 relationship work with the other chapters or the
2 other specialties? I mean, aren't you depending
3 on the other specialties for their input and
4 feedback to you?

5 MR. DAVIDSON: Yes. On the
6 compatibility issue. There's a section on
7 compatibility with existing land uses, and that's
8 based largely on the findings of the other
9 analyses, like noise and dust and public health.

10 MR. CHAPMAN: Okay. As related with
11 noise, would -- how much would it affect you if
12 the noise analysis wasn't complete?

13 MR. DAVIDSON: Well, then --

14 MR. CHAPMAN: And the -- I mean, are
15 they telling you what they've done, or are they
16 just saying okay, here's my decision, you -- you
17 juggle it.

18 MR. DAVIDSON: When they complete their
19 analysis, I either ask them or read their report,
20 if they came up with any significant unavoidable
21 impacts. And if so, that would be something that
22 I would identify as a potential land use
23 incompatibility.

24 So if the noise author indicated to me
25 that he had determined, based on the significance

1 criteria that he utilizes in his analysis, that
2 there is a significant impact that can't be
3 mitigated to a less than significant level, then I
4 would reflect that in my Staff assessment as a
5 potentially significant land use incompatibility
6 impact.

7 MR. CHAPMAN: Okay. If that comes after
8 the fact, where does -- do we go back to land use?
9 I mean, if -- if during noise a significant impact
10 is identified, and -- and proven, then do we back
11 up into land use and then have land use re-
12 analyzed? Their decision?

13 HEARING OFFICER SHEAN: Well, I think
14 the -- at the Evidentiary Hearing, if -- assuming
15 that what we would like to have is this witness
16 made available so you could ask him that question,
17 and others, and you intend to present a case that,
18 from a land -- first of all, we're dealing with
19 Land Use, so from a land use perspective, that
20 there is some aspect of the designation of this
21 portion of the property that this use, the
22 proposed usage is not compatible with. And then
23 you were to ask him whether if there were a noise
24 issue, he would revisit, and he answered -- and he
25 would answer you as he has here right now, I don't

1 think we're going to go back and make them conduct
2 a rewrite of the document.

3 And you will have made your point, which
4 is that there is an issue of land use
5 incompatibility in the opinion of the witness, if
6 there are unmitigable noise impacts.

7 And so I don't think we're rewriting
8 documents, you will have made your point for the
9 purposes of the Commission making a decision.

10 MR. CHAPMAN: Okay.

11 MR. VARANINI: Mr. Shean, could I -- I'm
12 just trying to think through and get some guidance
13 on process here. It seems to me that -- that
14 there are some clear concerns from the Yacht Club,
15 and -- but in terms of process, and being
16 sensitive to the fact that -- and probably luckily
17 for him, he's not a member of the Bar -- it almost
18 seems to be, I mean, one way, if we're going to
19 go, if elements are going to get moved into the --
20 into adjudication, that even though one would, I
21 guess, presume that things don't have to literally
22 meet the standard of a high court of chancery, one
23 of the things that has been a mess, just to be
24 honest about it, from time to time, is that we
25 have a very difficult time preparing. I mean, we

1 have essentially an infinite number of things to
2 either advance or protect.

3 And if the issue is I want to ask
4 questions of a given witness, or I want to make --
5 want to try and make a point, it would be very
6 helpful, it seems to me, that in the -- in the
7 hearing, as we move to the -- your order, and a
8 background on your order, that perhaps the Public
9 Adviser or some other good soul could help public
10 intervenors to kind of form -- formalize what
11 their point is. And then that would help us to
12 line up our experts, and I think most importantly,
13 it's not clear to me in the real world. You put a
14 witness on and someone asks them questions. We
15 don't know, obviously, what that witness is going
16 to say. It's not our witness. We don't prep that
17 witness, so we're sitting here in -- bearing the
18 burden of proof, but not having any particular
19 knowledge about what's going to happen.

20 The witness gets up. A person asks --
21 that has the questions asks the questions. The --
22 if it's a Staff witness the Staff defends that
23 witness, and protects his conclusions about the
24 case. Of if there are new conclusions made on --
25 on the spot, so be it.

1 But we're sitting here having to use
2 then essentially cross, as a mechanism to really
3 rebut. And you have a situation where you have no
4 idea what -- what you have to prepare, or what has
5 to be prepared, unless there are some very, you
6 know, focused issues that we -- that we can agree
7 that that's where we're going.

8 And I wondered if it would make sense
9 for us, as biased as we are, we think we're
10 reasonable but obviously others might think we're
11 -- because we have a certain interest, obviously,
12 to try to help put together what is the -- exactly
13 what's the issue. Not exactly, but what is the
14 issue. And if you -- if you need, or if you want,
15 or if you -- if it's appropriate, we could have
16 everything from a full blitz on -- gates, public
17 dedication, to public access, when you block
18 public access with a new development, doctrines
19 associated -- to no good work goes unpunished. So
20 that if you go out there and do something for your
21 employees, then you're condemned to -- you can't
22 do anything else because you did something good,
23 and at some later point in history you can't
24 change it.

25 So it would be very helpful, in terms of

1 we -- we had a real severe problem with this in
2 one of our earlier cases, where the issues
3 meandered, and you couldn't get ready, to the
4 point where you couldn't get ready. And so it
5 tended to double everything up. You have to try
6 to ask permission to come back.

7 So I would just, you know, I've -- but
8 if there's some way, or if we could -- we could
9 help in formulating these issues, we'd be happy to
10 do that. And even if it's just for me to be
11 quiet, then we'll do that, too.

12 HEARING OFFICER SHEAN: Let me indicate
13 my understanding is, of Mr. Chapman's point is,
14 and the matter that he wishes to present, is that
15 through the divestiture EIR, and perhaps some
16 other documentation that the county has, is that
17 there is at least a designation of a non-
18 operational use for the area east of the existing
19 power plant, and neighboring your Sportsman's
20 Yacht Club property. Correct? And that your
21 assertion is, therefore, if I understand
22 correctly, that this area is not to be used for
23 the proposal, and that it represents some
24 incompatibility or non-compliance with the
25 designation.

1 Now, I've already heard from your guys
2 is that that's descriptive and not prescriptive or
3 proscriptive. I think that sort of joins the
4 issue, the way both parties feel about it. To the
5 extent that he wants to ask such witness of --
6 with regard to noise, whether he might change his
7 view, you know, I -- that's perfectly permissible.
8 And -- and we can deal with that.

9 But I -- I think I understand the point
10 that Mr. Chapman wants to make, and it's certainly
11 one that we'll allow him to make. Whether or not
12 we go along with your analysis of what the effect
13 of that is, we don't know, any more than we know
14 whether we go along with the Applicant's analysis
15 of that. That's the purpose of the hearing, is to
16 be persuaded by the material that's presented to
17 us.

18 So at least that's my understanding of
19 the point he wants to make here on Land Use.

20 MR. VARANINI: As a -- as a technical
21 matter, and I'm saying this just for lining it up
22 in my own mind, not -- not to play lawyer games.
23 But he has the burden of proof, doesn't he? If he
24 -- if he asserts that there is this, this, and
25 this, and it doesn't come from anybody else in the

1 record, no expert in the record says -- has even
2 analyzed that, and he's asked twice that it be
3 analyzed, and for whatever reason it hasn't been
4 analyzed, you have a question, it seems to me,
5 first, is why hasn't it been analyzed. That's --
6 that's really an administrative matter.

7 And then secondly, if it hasn't been,
8 the Staff takes its position, then he has -- the
9 burden of going forward shifts to him, and then if
10 he makes his case then we have the ultimate burden
11 of coming back, of the burden of proof. Is that
12 right?

13 HEARING OFFICER SHEAN: You got it.

14 MR. VARANINI: Sorry. This has just
15 been kind of code --

16 MR. CHAPMAN: Well, I -- and the funny
17 thing is that I can follow your code.

18 MR. VARANINI: That's -- that's
19 terrible.

20 (Laughter.)

21 MR. VARANINI: I don't know what I said.

22 MR. CHAPMAN: The burden of proof is
23 laid out in the very beginning of everything to do
24 with -- with building a power plant, and the
25 burden of proof falls upon the Applicant. The

1 burden of proof that -- that I'm following right
2 now, and that -- the only burden that I've tried
3 to give myself through this whole thing, is ask
4 good questions. And when you look at -- and what
5 comes up on this issue here is, I mean, at this
6 point, what you might call a lot of circumstantial
7 evidence. But circumstantial evidence will win
8 the day if you have enough of it.

9 And that's -- that's what we have here.
10 We have document after document that all carves
11 that out.

12 MR. VARANINI: Can we, again, not to be
13 pejorative, because I don't think it is a
14 pejorative matter. Could we take his deposition?

15 HEARING OFFICER SHEAN: I don't think we
16 need to --

17 MR. VARANINI: No, I mean --

18 HEARING OFFICER SHEAN: -- we're --

19 MR. VARANINI: -- I'm trying to think --

20 HEARING OFFICER SHEAN: -- we're not
21 going to -- okay, the answer is no, then. A one
22 word answer. Right.

23 MS. DeCARLO: Garret, if I could suggest
24 just for process-wise, that maybe we should have
25 Land Use towards the end of the adjudicatory

1 process, just so that Mr. Chapman can refer to any
2 of the -- the other topics he wishes to cross
3 examine?

4 HEARING OFFICER SHEAN: We'll consider
5 that. I think we could end up getting in a circle
6 here, where if he would then testify as to
7 something in land, the next guy would say well, I
8 have to change mine too, and we'll end up chasing
9 our tail. I think you have to basically trust the
10 Committee has a sufficient understanding of how to
11 correlate the information in one topic to another.
12 Otherwise, we're hopelessly lost.

13 MS. DAVIS: I have a question about Mr.
14 Chapman's point regarding the correlation between
15 Land Use and Noise.

16 When you asked the question if -- if
17 noise becomes an issue will that affect land use,
18 are you referring to, I guess, things that might
19 come up in these workshops, or are you more
20 referring to the fact that in the noise analysis,
21 we're dealing with predictions, and that in the
22 course of building and operating this power plant,
23 that noise levels may be different than predicted.

24 Is that question clear?

25 MR. CHAPMAN: No, I'm not sure. In the

1 Land Use specialty, you refer to the visual
2 significant, the finding of visual significance.
3 There -- if you, as Land Use, were to be aware of
4 both visual and noise, and maybe even other
5 significance, then I would presume that the bottom
6 line of your report then is going to be a finding
7 of significance problems.

8 MR. DAVIDSON: Yeah, that seems likely.
9 So I guess what you would have is some change in
10 the significance of an impact in some other issue
11 area, and possibly then added to that there would
12 be one additional significant impact, which is a
13 Land Use impact.

14 MR. CHAPMAN: There --

15 MR. VARANINI: Is it okay to engage in a
16 dialogue here, or is that going to just waste
17 time?

18 HEARING OFFICER SHEAN: Well, I -- let
19 me just say I think that Mr. Chapman raises a
20 point, and I -- my recollection is, from the time
21 we were here at the Informational Hearing, is that
22 when you look at the overall plot of the property
23 that's owned by the Applicant, the question arises
24 what in your judgment caused you to select this
25 area, as opposed to any of the other areas under

1 your control, when it would appear that this area
2 has the most significant impact upon your
3 neighbors.

4 And I think the Committee's going to
5 want to hear from you what your rationale was.
6 You have an area where there are tanks. Should
7 those have been, you know, as an alternative,
8 should those have been removed and the facility
9 put out on that side, which is far away from this
10 marina usage. Or you have an area there, the
11 transmission. And obviously, you would've
12 disturbed transmission to put it there. And I
13 think to some degree, you've generally addressed
14 this, and those are among the likely questions
15 that will arise from -- if there was -- if there
16 was a designated buffer that was only even
17 descriptive, what precipitated the choices to
18 eliminate the buffer and not go into another area
19 that basically didn't serve that buffer purpose.

20 And that's the point he's trying to
21 make. And I -- it's a fair one, and one I'm sure
22 that the Commissioners are going to want to hear.

23 Okay. Anything further?

24 MR. CHAPMAN: Yes. On page 206, under
25 Section 8463 dot something, it talks about the

1 county hazardous waste program. And you indicate
2 in there that because you are the Energy
3 Commission, you kind of override that. But you
4 refer in there to if the development project
5 obtains a hazard score of 80 or more, then
6 something kicks in.

7 My question is, was this project scored?
8 Does it have a hazard score?

9 MR. DAVIDSON: I don't know. You'd have
10 to ask the person who examined that -- that issue.
11 I don't know. They may have done something
12 equivalent to the scoring system that the county
13 uses in their ordinance, but I don't know the
14 answer to that.

15 MR. CHAPMAN: Okay. So somebody,
16 another specialty referred that information to
17 you, is that --

18 MR. DAVIDSON: No. This information is
19 part of the zoning ordinance, and it refers to a
20 land use permit that may have to be obtained if
21 this is going through local permitting, if you are
22 building in the heavy industrial zoning district.
23 And so it's -- it's there as a -- as a point of
24 information, just to try to identify what
25 requirements of the local zoning ordinance would

1 conceivably be applicable to this project if it
2 was going through their process.

3 MR. CHAPMAN: Okay. So I should ask
4 Hazardous Waste Management, is that who I should
5 ask?

6 MR. DAVIDSON: Yes.

7 MR. CHAPMAN: Okay. I'm trying to
8 understand what the -- what we're trying to do
9 here today. There -- is it now -- I've got some
10 additional Land Use items here that probably would
11 only be appropriate if he were to agree with the
12 findings. Do I put those out for consideration --
13 here's -- if Land Use found this to be a
14 significant problem, then what I'm saying is Land
15 Use should recommend the use of an alternate site
16 as a LAND-3 requirement.

17 HEARING OFFICER SHEAN: Okay.

18 MR. CHAPMAN: Is -- is that -- does that
19 come in, or not? I mean --

20 HEARING OFFICER SHEAN: Well, if I
21 understand correctly -- well, let me put it this
22 way. Practically, it seems to me that the avenue
23 to get to an alternative site within the property
24 controlled by the Applicant is that there are --
25 and I know you're going to assert this later --

1 significant noise and visual impacts which are not
2 mitigable at the current location, but are
3 mitigable by choosing an alternative. Right?

4 MR. CHAPMAN: Right.

5 HEARING OFFICER SHEAN: Okay. So that's
6 -- that's the path. And part of what you're
7 asserting, if I'm understanding the point you made
8 a little bit earlier, is that in support of that,
9 you have a designation of this as a buffer area,
10 because this is the very type of impact that was
11 to be avoided.

12 Okay. So that's how I -- how at least I
13 -- the logic tree that I see, or how it hangs
14 together. The path essentially is from the noise
15 and the visual to the alternative.

16 MR. CHAPMAN: Okay. All right. Then
17 the one noise condition of -- or, excuse me, Land
18 requirement that I think needs to be added, that
19 -- that's omitted, and I'm putting this under Land
20 because I don't know where it belongs, but -- and
21 maybe I'll get direction here -- is with regards
22 to the requirement, the CEC requirement to provide
23 public use lands, a public use area.

24 This project is -- is associated with
25 the -- the recreational use, it is associated with

1 a major body of water, and all of that requires as
2 a condition of certification that a public use
3 area be provided.

4 MR. DAVIDSON: Well, as I don't know the
5 proper procedure, someone can correct me, I assume
6 that the Commission --

7 HEARING OFFICER SHEAN: We're just
8 talking here.

9 MR. DAVIDSON: Pardon me?

10 HEARING OFFICER SHEAN: We're just
11 talking here.

12 MR. DAVIDSON: Okay. I assume the
13 Commission could impose conditions to that effect
14 if they wanted, on -- on the approval.

15 My conditions, though, are based on
16 addressing an identified significant impact. So
17 in order to add a condition like that, I'd have to
18 have identified some type of a land use impact
19 that was significant, and that type of measure or
20 condition you're talking about would also say how
21 to reduce that impact.

22 But I don't have an impact that really
23 relates to the --

24 MS. DAVIS: What kind of impact would --
25 would precipitate that kind of condition?

1 MR. DAVIDSON: Well, some of the stuff
2 we were talking about earlier, I mean, if -- if
3 that recreational use, the recreational area was
4 on -- within the project site was felt to be, you
5 know, important to the community, then the
6 Commission might decide that there was some reason
7 they wanted to support its preservation. But from
8 a Land Use impact standpoint, if it was some type
9 of formerly designated area by a government agency
10 in some plan or previous approval, and we were
11 violating that by not allowing the continuation of
12 that recreational use due to the construction of
13 the new power plant, I think that would warrant a
14 Land Use condition for preservation of the
15 recreational area, because we would be -- it might
16 fall within the -- the significance threshold we
17 use of inconsistency with applicable land use laws
18 and regulations.

19 So a lot of what I've heard so far about
20 the status of that recreational area, or whether
21 it should be retained or not, in my mind would be
22 based on a couple of things, both of which were
23 touched upon. One, that there was some previous
24 official governmental action that said that that
25 area should be in recreation and -- and stay in

1 recreational use in the future. Or secondly, and
2 this is more of a legal matter, whether there is
3 some type of prescriptive easement or right that's
4 been established by the public for the
5 recreational use of that area.

6 I don't know that the -- that
7 recreational use, that recreational area has, you
8 know, has been available to the public widely and
9 would meet the type of conditions that the courts
10 might interpret as -- as, you know, entitling it
11 to some type of prescriptive use by the public. I
12 mean, the classic example of a prescriptive use
13 that I always hear about is there's a vacant piece
14 of land, and people in the community cut across it
15 on a regular basis, and the land owner does
16 nothing to prevent that from happening. He
17 doesn't post any signs, he doesn't put a fence
18 around the property. So conceivably, the
19 community has a prescriptive right to use that
20 path across the property.

21 So there'd have to be some type of
22 similar circumstance, I would guess, with the
23 recreational area on the project site, that the
24 public has been given some type of unfettered
25 access and it's been used in that way.

1 MS. DeCARLO: Tony, when you referred to
2 CEC's policy requiring public use lands, what --
3 are you referring to anything in particular?

4 MR. CHAPMAN: The Warren-Alquist Act.

5 MS. DeCARLO: Any particular section?

6 MR. CHAPMAN: 25529.

7 MR. VARANINI: Could I make a comment on
8 that? We've looked at a couple of those things
9 pretty carefully, and, first of all, it's
10 reasonably clear that -- that those -- those
11 elements of the act were really put in for new
12 plants that -- that when they -- as they're
13 approved, block existing access, or make existing
14 access more difficult. Much of the act isn't --
15 doesn't have quarrels with repowering. So if you
16 think about a repowering project that's already
17 fenced, already controlled, already -- already
18 dedicated, zoned, paid for, et cetera, et cetera,
19 that's -- that seems to be, in that particular
20 code section, from our perspective, is for new
21 projects where you're essentially going in and
22 there's some issue about whether the Commission's
23 approval will preclude existing access, or make it
24 more difficult.

25 Secondly, there's an entire doctrine on

1 implied public dedication, and that's a -- that is
2 a subset of the old theory of almost by getting a
3 implied right-of-way, or getting -- or getting
4 some kind of right over somebody else's land
5 because they don't protect it.

6 But there's a huge doctrine on implied
7 public dedication. The cases were Gian/Dietz --
8 Gian/Dietz are the two cases. The code was
9 rewritten because the problems with implied public
10 dedication, and in some ways, I think these -- one
11 of the reasons -- one of the problems I'm having
12 is we would develop our view on that, I guess, and
13 have our expert ready to go. But it's -- it's --
14 I think it's important that -- that we understand
15 that you have to range of what -- what you'd like
16 us to cover. Because some of this stuff can get
17 pretty, you know, unnecessarily obtuse pretty
18 fast.

19 And that's something, of course, we
20 could brief, if the Committee wanted us to do
21 that. We wouldn't have to get into it in the
22 proceeding.

23 But I would say just off the top of my
24 head, if I have to react to your -- to your
25 testimony is that about two-thirds of it are going

1 to be legal analysis, and maybe a third is going
2 to be some form of public or -- or general gestalt
3 that somehow this makes things worse than it could
4 be otherwise. And that's a difficult one to
5 handle, but I would think that about -- about two-
6 thirds of this would be legal.

7 And if you can't find affirmatively the
8 -- the restriction, and then there has to be
9 there, it seems to me, an administrative
10 restriction of some kind, or agreed restriction or
11 a deed restriction.

12 HEARING OFFICER SHEAN: Okay.

13 MR. VARANINI: I mean, I'm -- all I'm
14 trying to do is just get calibrated, because it's
15 -- it's a matter of, you know, how much throw
16 weight we have to put together, and on what
17 target. And so, you know, if you can help me out
18 --

19 MR. CHAPMAN: Well, it probably wouldn't
20 take much, because I don't have much throw weight,
21 so --

22 MR. VARANINI: No, no. No, you -- no,
23 you're the most difficult kind of person to deal
24 with, because you're operating from logic and not
25 the law.

1 (Laughter.)

2 MR. CHAPMAN: Thank you. I'll take that
3 as a compliment.

4 HEARING OFFICER SHEAN: Okay. Anymore
5 on this land subject, then?

6 MR. CHAPMAN: There --

7 HEARING OFFICER SHEAN: I'm going to
8 reserve for you an opportunity to -- at the
9 Evidentiary Hearing.

10 MS. DAVIS: I have a question, too. And
11 earlier, Mr. Chapman asked about recreational use,
12 and I think different than the designation of that
13 -- of the plot of land. You were talking about
14 recreation in general in the area being affected
15 by this facility.

16 I believe that you -- you have questions
17 about that, right?

18 MR. CHAPMAN: Right. Well, they're --

19 MS. DAVIS: I just wanted to hear from
20 Jon Davidson whether you think that that's -- that
21 goes into Land Use, or whether it's more of a
22 Socio issue, or is that something that we should
23 discuss while we're still on Land Use, or not.

24 MR. DAVIDSON: Well, quite frankly, in
25 the focus that the -- I think what's pivotal for

1 -- from my point of view, for the Land Use
2 discussion, is whether there is some type of
3 formal, duly approved by, you know, a government
4 agency, some type of legally enacted land use
5 designation, or restriction or encumbrance to the
6 use. And that would be key to -- to my concerns
7 regarding recreation.

8 I think other aspects of recreational
9 use are either legal or maybe socioeconomic, or
10 some other issue.

11 MS. DAVIS: Okay.

12 HEARING OFFICER SHEAN: Mr. Chapman, do
13 you have some further Land Use matters?

14 MR. CHAPMAN: Cheri's question, I guess,
15 is -- is to the point, is where my question to her
16 was aimed is that we have a multitude of
17 specialties that all have a title. Now, several
18 of those refer to the CEQA requirements from
19 Appendix A guidelines. Well, in -- in that
20 guideline they say one thing you have to look at
21 is recreation. And since it's not one of the
22 listed specialties, I'm just wondering who kind of
23 accepted that as an also-ran issue for analysis.

24 HEARING OFFICER SHEAN: Well, the point
25 is you want to make it the point; right?

1 MR. CHAPMAN: It is the point, yes.

2 HEARING OFFICER SHEAN: Okay. And we're
3 going to let you do that.

4 MR. CHAPMAN: Okay.

5 HEARING OFFICER SHEAN: And we'll figure
6 out where to stick it.

7 MR. CHAPMAN: Okay. Well, okay. I'm
8 just -- and you'll get back to me?

9 HEARING OFFICER SHEAN: Yeah.

10 MR. CHAPMAN: I'm wondering who I ask
11 the questions to. That's what -- which, under
12 what specialty do I go into that?

13 HEARING OFFICER SHEAN: Well, I guess
14 the question is, none of the specialties that are
15 currently in the Staff's Final Assessment include
16 requiring a public recreational area to be
17 established. This is something that is your
18 point; right? And --

19 MR. CHAPMAN: Well, no, exactly -- it's
20 your point, not mine. It's --

21 MS. DAVIS: I -- I believe that it's
22 kind of talking about effects on recreation in the
23 area. Is that correct?

24 HEARING OFFICER SHEAN: Are you trying
25 to have a portion --

1 MR. CHAPMAN: That, as well. Yes.

2 HEARING OFFICER SHEAN: -- of the site
3 designated for recreational use --

4 MR. CHAPMAN: Yes.

5 HEARING OFFICER SHEAN: -- public
6 recreational use. Right.

7 MR. CHAPMAN: I mean, Pittsburgh, when --
8 when they built the last Pittsburgh plant, there's
9 -- there's now a park called Riverview Park that's
10 run by the city, that was -- that was deeded from
11 -- from the plant over to the city, as far as
12 operation. And that's what this --

13 MR. VARANINI: That wasn't a new plant.

14 MR. CHAPMAN: Right.

15 HEARING OFFICER SHEAN: And my
16 understanding of the statute assessment is there
17 is no such requirement. Right? So this is
18 largely your -- this is your proposal. And all
19 I'm saying is we'll provide you the opportunity to
20 make the pitch.

21 MR. CHAPMAN: Okay. All right.

22 MR. DAVIDSON: I might just indicate
23 that from an impact assessment standpoint, we'd be
24 concerned with recreation from a couple of
25 different standpoints. One, would the project

1 create a increased demand for recreation in the
2 community such that new facilities needed to be
3 constructed. Or, secondly, would it have an
4 adverse effect on existing public recreational
5 facilities.

6 HEARING OFFICER SHEAN: Okay. And --
7 and those go to the criteria that the Committee
8 would use to determine whether or not such a use
9 should be established.

10 Okay. I understand. We're not trying
11 to decide the subject of it now. We're just
12 trying to get the ideas and get the concerns, and
13 then we'll, if we can iron them out here, fine.
14 If we can't, we'll -- we have a whole 'nother day
15 for that somewhere out in April.

16 Is there another Land Use point? All
17 right.

18 Well, then I will mark my little paper
19 that -- I'm sorry. Yes, ma'am.

20 MS. HAGER: My name is Carol Hager, and
21 I am the Commodore of Sportsman Yacht Club. And I
22 have a couple of points to make.

23 I believe our interests were expressed
24 to you many times in the past several workshops,
25 and that you knew what our interests were before

1 coming here. Also, that land, before it was
2 cleared of all vehicles and recreational people,
3 was highly used. My father even had a key to that
4 land to go fishing on that property. So it has --
5 if past practice has anything to do with it, it is
6 -- was established as a recreational area.

7 HEARING OFFICER SHEAN: Let me just ask
8 a question. As I read forward into the Biology,
9 and if I understand correctly, as part of your --
10 what's being recommended for the Biology
11 conditions is that there's going to be a barrier
12 out in the -- in the river that has little bitty
13 holes that won't let the little bitty creatures
14 into it so they won't be entrained.

15 Is the effect of that going to be that
16 there are no fish in that intake area? I mean --

17 MR. HARRER: The intake area, yes.
18 That's essentially what it's there for.

19 HEARING OFFICER SHEAN: Okay. So --

20 MR. CHAPMAN: Well, the bloom wouldn't
21 include -- you wouldn't -- you wouldn't draw the
22 water from the outflow directly into --

23 MR. HARRER: No, it's the inflow. The
24 intake is farther.

25 MR. CHAPMAN: All right. But he's

1 asking about the area where the --

2 MR. WORRELL: Can I speak out of turn?

3 HEARING OFFICER SHEAN: Well, let me
4 just get my question answered. I'm trying to
5 understand whether or not that bloom encompasses
6 that little inlet that --

7 MR. HARRER: No, it does not.

8 HEARING OFFICER SHEAN: It does not.

9 All right.

10 MR. WORRELL: Could I ask something?

11 HEARING OFFICER SHEAN: Sure.

12 MR. WORRELL: Typically, the use of the
13 recreation, although I'm not a BSEA member, I have
14 observed it since it was put in. The use of the -
15 - of the recreational area, or park, whichever --
16 whatever designation you deem to give it, has not
17 been along the riverfront, where the thunder bloom
18 will go. The only thing that that was -- was used
19 for is there's a rogue run of steelhead that come
20 through there every two years, and people would
21 fish in the river for the steelhead.

22 Because of the shoaling and the habitat,
23 and the way of having to get through the tules to
24 the water, people don't fish there. They fish on
25 the outflow. The outflow also draws the catfish

1 and the carp, which make that a lucrative place to
2 fish.

3 But there's many other -- many other
4 activities going on at that place, other than
5 fishing. They have established barbecue pits, and
6 people camp there. They have an observation pier.
7 It can't be considered a fishing pier because
8 there's tules on the river side of it, so I assume
9 it's a birdwatching pier.

10 There's lots of other activities in that
11 park that took place.

12 HEARING OFFICER SHEAN: My -- my
13 recollection is that when we were out there, the
14 Applicant indicated that that was a PG&E employee
15 facility. Has it been public -- I mean, it may
16 have been that people --

17 MS. HAGER: My father was not -- my
18 father was not an employee of PG&E.

19 MR. WORRELL: When I was a kid in
20 Antioch, in the fifties -- I don't know if
21 anything goes back that far -- and they didn't
22 have the new plant, they did have one, two, and
23 three, and they had a similar outflow, it was
24 common practice of the citizens of Antioch to cut
25 the chain link fence and walk down to the -- I

1 think that's what the gentleman referred to as --
2 as gained access.

3 And we had a standing agreement that as
4 long as we didn't go inside -- they have a fence
5 on the west side of the property that was about --
6 a double fence, about 12 foot wide. As long as we
7 didn't go in that other side of the fence, they
8 wouldn't send the guards down to run us off. And,
9 I mean, it was an established policy of Antioch
10 citizens. Of course, we only had about 5600
11 people back then, so -- and, you know, a third of
12 those worked at PG&E and the other couple worked
13 at -- at the steel mill. So things were a lot
14 different then and people didn't sue people and
15 all of that stuff.

16 But it's --

17 HEARING OFFICER SHEAN: A lot of things
18 were way different back then.

19 MR. VARANINI: Thank God I don't
20 represent Southern anymore. They treat their
21 trespassers a whole other way.

22 (Laughter.)

23 HEARING OFFICER SHEAN: All right.

24 MS. HAGER: But my father had a key, so,
25 I mean, he didn't -- obviously didn't cut any

1 fencing.

2 But I just -- if it goes to past
3 practices, I just wanted to say that that area was
4 used, not just by PG&E employees.

5 HEARING OFFICER SHEAN: All right.

6 Well, we will reserve time -- yes, sir.

7 MR. WORRELL: I have some comments. I
8 don't know if now is the appropriate --

9 HEARING OFFICER SHEAN: Relative to the
10 Land Use topic?

11 MR. WORRELL: Yes.

12 HEARING OFFICER SHEAN: Okay, go ahead.

13 MR. WORRELL: My name is Bill Worrell,
14 I'm an Antioch resident. I want to take this
15 opportunity to appreciate the fact that we don't
16 have an armed guard here today. Also, from the
17 very beginning, people of Sportsman, Incorporated,
18 have asked for legal help. I think he called it a
19 -- a formatter, or something? I -- I'm sorry, I
20 have real problems with the verbiage that he used.

21 But we've asked for some help from the
22 beginning, because we can't work within this
23 format. We're tradespeople, and, you know, you
24 start talking about these -- these words that to
25 me mean the same thing, but they don't to you

1 folks. And it's very difficult, and I do think
2 I'd like to reaffirm or re-ask that the Energy
3 Commission provide us with some help, because we
4 need it.

5 And then maybe if we were provided with
6 the help, we wouldn't -- then the legal advisor, I
7 don't -- do you represent Southern or Mirant now?

8 MR. VARANINI: Well, I work for the
9 project. It's --

10 MR. WORRELL: Okay. Anyway, that's --

11 HEARING OFFICER SHEAN: Okay. Well, we,
12 you know, the best that the Energy Commission can
13 do, since we can't use public funds to support a
14 private interest, is through the Commission's
15 Public Adviser's office. The duly -- assigned
16 Public Adviser is a lawyer, and the Staff is here
17 to help. Ms. Krapceovich, over here on the wall,
18 is the Associate Public Adviser, and, you know,
19 I'm -- let me just say, by virtue of what I've
20 seen in the filings, and heard in the
21 presentations, you guys are doing just fine. So I
22 -- our job is to facilitate hearing from the
23 affected public, so -- so far, I think you're
24 doing fine.

25 MR. WORRELL: Well, they're still --

1 you're still going on with the project.

2 HEARING OFFICER SHEAN: We're still
3 going on with the process.

4 MR. WORRELL: The thing that I wanted to
5 speak about was the sphere of influence of
6 Antioch, as a citizen of Antioch, and I don't
7 really know all the legal ramifications. Three
8 months ago, Southern Energy proposed to lower
9 their assessment by two-thirds in the county,
10 because they paid too much for the plant. I was
11 told that that was a preliminary thing of being
12 incorporated into the City of Antioch.

13 I've talked to people that work for the
14 City of Antioch. They say that there's been
15 discussions. So I don't know, I'm sure that's not
16 legal, binding, but what -- as a citizen, I hear
17 this thing, sphere of influence. I definitely
18 think that the project is in the sphere of
19 influence of Antioch. It has an Antioch telephone
20 number, has an Antioch address. People in
21 Antioch, even though it's to the best of my
22 knowledge always been called Contra Costa Power
23 Plant, it's always been called Antioch PG&E. It
24 still is. So I definitely think the project comes
25 under the sphere of influence of Antioch.

1 In the sphere of influence of Antioch is
2 the Antioch General Plan, which was asked to be
3 addressed at other meetings. This is out of date.
4 It expired in the year 2000, and they're working
5 on a new one. I guess Antioch is like Southern.
6 Southern's discharge permits expired, but they're
7 working on a new one.

8 In the Antioch General Plan the project
9 is in violation on a number of issues, air quality
10 -- I'm not going to read from here because your
11 person already has. It definitely violates the
12 air quality, as stated in the Antioch General
13 Plan. It violates the visual impact, as stated in
14 the Antioch General Plan, by providing a other
15 than pleasant view to the designated entrances to
16 the town. It probably will violate the noise
17 standards of Antioch that are established for
18 industrial areas.

19 And it violates one of the premier
20 issues of Antioch's Planning Commission, or
21 planning, in that Antioch wants -- and they
22 definitely say they don't want smoke stack
23 industry -- they want clean, light industrial
24 business. And that was what was started in 1988,
25 and it's still the policy of the city council, as

1 late as the meeting last week, to say they want
2 clean, light industrial business in the town.

3 Okay. Thank you.

4 HEARING OFFICER SHEAN: Thank you.

5 Okay. Let's move on to our next topic,
6 which is Socioeconomics, and that begins on page
7 341 of the Staff's assessment.

8 All right. Let's first take a look-see
9 and see if there are conditions that have the day
10 issue. Okay. Is that SOCIO-1 something you'd
11 like covered in the timing --

12 MR. SHILEIKIS: Yes, I think so.

13 HEARING OFFICER SHEAN: Okay.

14 All right. Well, my quick reading of
15 this was that it covered the standard set of
16 employment, housing, school, public service
17 impact, environmental justice, and has two
18 conditions appearing on page 355.

19 So, are there any substantive issues
20 that the Applicant has with the analysis or the
21 conditions? Mr. Chapman?

22 MR. CHAPMAN: Yes, I've got one.

23 HEARING OFFICER SHEAN: Okay.

24 MR. CHAPMAN: There -- page 346 talks
25 about impacts on the local economy -- page 346,

1 talking about impact on local economy. There --
2 you don't have any -- any discussion there with
3 regards to the economic impact upon Sportsman's
4 Yacht Club and the relationship of the proposal to
5 -- to us.

6 What I'm -- what I'm interested in here
7 is -- and not -- not being too sweeping with that
8 request, is the construction process and startup
9 process for this plant. I'll refer you to Noise
10 on page 251, where they recommend vacating the
11 property.

12 MS. STENNICK: During construction?
13 During the --

14 MR. CHAPMAN: That refers directly to
15 steam blows.

16 MS. STENNICK: Okay.

17 MR. CHAPMAN: But what -- what I'm
18 interested in here is with the noise and -- and
19 just general disturbance created during the
20 construction period and startup.

21 I want to ask that that be considered,
22 and make a condition that says that Sportsman
23 would be reimbursed for the loss of their activity
24 based income during that period. There -- I don't
25 believe that, you know, general rents and -- and

1 things like that, I don't see any way of making a
2 claim on that. But for the activities and the
3 loss of participation in activities during that
4 period, I think that's a direct impact upon us,
5 economically.

6 HEARING OFFICER SHEAN: Can you expand
7 on this a little bit? Because I -- I was here, of
8 course, at the Informational Hearing, and we were
9 trying to get a -- and during the site visit --
10 get a general idea of the community's reaction and
11 concerns. Can you describe for me now what are
12 those activity based income, or the -- what sort
13 of things you do at the -- at the Yacht Club there
14 that will be impacted, in your view, by the
15 construction or operation?

16 MR. CHAPMAN: Well, the activities of
17 the Yacht Club include, you know, everything from,
18 you know, Easter egg hunts to afternoons on the
19 porch with a cold beer in your hand. And if the
20 area is in a upheaval to the point that you have
21 to worry about whether you're going to be able to
22 hear yourself think or talk during -- during
23 construction periods, or the fact that, you know,
24 there's just so much disturbance going on next
25 door, I think it's a -- a fair prediction that

1 we're going to have a certain amount of people
2 that just choose to avoid the area during this
3 period.

4 HEARING OFFICER SHEAN: Okay. I'm
5 trying to get the idea. Are these people who
6 would otherwise --

7 MR. CHAPMAN: Have been at the club
8 spending money.

9 HEARING OFFICER SHEAN: And would this
10 -- spending money by either being -- being
11 members, or do you have eating there, or
12 purchasing things?

13 MR. CHAPMAN: Yes. You know, you -- you
14 have dinners and -- and such, as far as events
15 that you have -- have charge admission. And --

16 HEARING OFFICER SHEAN: So these are
17 like --

18 MR. CHAPMAN: -- and the cost of --

19 HEARING OFFICER SHEAN: These are fund-
20 raisers, right?

21 MR. CHAPMAN: -- and fund-raising, and
22 -- and bar, you know, the bar activity, and all of
23 that is -- is income to the club.

24 HEARING OFFICER SHEAN: Now, just so I
25 understand. You don't -- or let me ask this as a

1 question. Do you operate either a restaurant or
2 bar that is open to the public?

3 MR. CHAPMAN: No.

4 HEARING OFFICER SHEAN: No. So that you
5 do not have a, in that sense, an ongoing public
6 business, but what you do have is --

7 MR. CHAPMAN: Members and guests.

8 HEARING OFFICER SHEAN: -- member
9 activities that include meals, the bar, and other
10 things such as that. Right?

11 MR. CHAPMAN: Right.

12 MS. STENNICK: So all --

13 HEARING OFFICER SHEAN: And that those
14 are fund-raising -- those are recreational as well
15 as fund-raising, is that the idea?

16 MR. CHAPMAN: Yes.

17 HEARING OFFICER SHEAN: Okay.

18 MS. STENNICK: Okay. So all of your --
19 your activity based income is for members only.

20 MS. HAGER: No. Well --

21 HEARING OFFICER SHEAN: Well, why don't
22 get you to describe it, then.

23 MS. HAGER: We have reciprocals with
24 over a hundred yacht clubs.

25 HEARING OFFICER SHEAN: Why don't you --

1 MS. STENNICK: I'm sorry. Did you need
2 my name? Amanda Stennick, S-t-e-n-n-i-c-k.

3 MR. CHAPMAN: The -- and I'll go to what
4 was just mentioned here, as -- as one quasi public
5 activity that we depend on quite a bit. And this
6 is where other yacht clubs will come and visit our
7 club for -- for a weekend, what they call --
8 what's termed as a cruise out. Now, we'll -- we
9 will supply them a dinner for -- to encourage that
10 activity. There with -- our harbor is -- our
11 harbor and the ferry are the draw to encourage
12 those people to come and -- and spend time at our
13 facility.

14 The -- the income off of the dinner that
15 we might serve them, and -- and the bar that --
16 that they're going to run up accounts for a major
17 part of, you know, our activity based income.

18 HEARING OFFICER SHEAN: I -- at least I
19 have a clearer understanding now.

20 MR. CHAPMAN: I mean, other areas really
21 just revolve around activities, and, you know,
22 it's activities as far as individual events,
23 parties, dinners, whatever.

24 MS. DAVIS: Do you rent out your
25 facilities?

1 MR. CHAPMAN: Excuse me?

2 MS. DAVIS: Do you rent out your
3 facilities?

4 MR. CHAPMAN: No.

5 MR. WORRELL: No, but we do let -- we do
6 let other organizations in. Last month we had an
7 Eagle Scout ceremony there. We have other -- it's
8 a limited thing, probably similar to Elks or
9 something. It's not open to the public per se,
10 but it isn't only members. We -- we do have
11 guests and other yacht clubs that are members of
12 the -- of the organizations come in, and we do --

13 MR. CHAPMAN: A member can sponsor an
14 event.

15 MR. WORRELL: -- under membership
16 sponsorship bring in other organizations. Our
17 income's used to support ourselves, and also to
18 charitable contributions. We're a major
19 contributor to the Make A Wish Foundation.
20 Through Driftwood Yacht Club we provide a
21 scholarship for the -- for the -- an annual
22 scholarship for the local schools, and other --
23 other activities. We -- we're non-profit, so --
24 but we do have to pay the PG&E bill every month,
25 and that's what -- this is how we do that.

1 MS. STENNICK: I'd like to ask exactly
2 what you're asking Energy Commission Staff to do
3 in this particular area.

4 MR. CHAPMAN: There --

5 MS. STENNICK: Because there's a -- if
6 I'm understanding you correctly, there's a lot of
7 information that could've been provided to Staff a
8 lot earlier in the process to do this type of
9 analysis. And I want to -- I just want to be
10 clear as to what you're asking Staff to do.

11 MR. CHAPMAN: To require -- require the
12 Applicant to reimburse Sportsman's Yacht Club for
13 the loss of activity based income during
14 construction and startup phases of the project.

15 HEARING OFFICER SHEAN: Do you have an
16 estimate of what that loss is?

17 MR. CHAPMAN: I went -- I went through
18 it, and if -- if we -- if we predicted a 25
19 percent loss for two years, that would total just
20 \$19,888. Now, that's the old number out of the
21 sky trick. I mean, it -- it is based upon our
22 historic income, and then just factored off of
23 that.

24 MS. STENNICK: And you'd be asking for a
25 one-time fee of approximately \$20,000 from the

1 Applicant to cover this loss of fee based --

2 MR. CHAPMAN: That would be one wa to do
3 it. If they would rather, you know, deal with
4 auditing books and things like that, I'm -- I'm
5 leaving -- I mean, the details, I guess, are --
6 can be discussed. But I'm just identifying the
7 issue.

8 MS. STENNICK: Okay. Well, this issue
9 hasn't been raised in the past. That doesn't mean
10 it's not a valid issue and a valid concern on your
11 part. If Staff is to do this type of analysis I'd
12 certainly --

13 HEARING OFFICER SHEAN: No, you're not.
14 We're just going to --

15 MS. STENNICK: Okay.

16 HEARING OFFICER SHEAN: -- hear what
17 we're going to hear from them at the Evidentiary
18 Hearings.

19 MS. STENNICK: Okay.

20 HEARING OFFICER SHEAN: You need not do
21 anything further. I think it's up to the
22 Committee at this point.

23 MS. STENNICK: Okay.

24 HEARING OFFICER SHEAN: Is there
25 something further on the Socio area, Mr. Chapman?

1 MR. CHAPMAN: No.

2 HEARING OFFICER SHEAN: Okay. Well,
3 we'll afford you an opportunity to make that
4 presentation, then.

5 And you have a pretty clear idea of what
6 he's talking about?

7 MR. VARANINI: Absolutely.

8 HEARING OFFICER SHEAN: Okay.

9 MR. VARANINI: Get out the checkbook.
10 Not a bad thing.

11 HEARING OFFICER SHEAN: That's not a bad
12 thing. It's larger than a state employee's
13 checkbook, I'll tell you that.

14 MR. VARANINI: I don't know about that.
15 (Laughter.)

16 MS. STENNICK: Are there any further
17 questions or issues?

18 HEARING OFFICER SHEAN: All right.

19 MS. STENNICK: Thank you.

20 HEARING OFFICER SHEAN: Thank you.

21 MR. CHAPMAN: So am I to understand that
22 that would not be listed as --

23 HEARING OFFICER SHEAN: It will be
24 listed.

25 MR. CHAPMAN: It will be listed. Okay.

1 HEARING OFFICER SHEAN: You -- you get a
2 chance to make that pitch.

3 MR. CHAPMAN: Okay.

4 HEARING OFFICER SHEAN: All right. No,
5 I mean, that's why we're here, is to find out what
6 it is, among other things, in addition to what you
7 see, that you'd like to see the Commission have in
8 its decision. So we -- we have a -- a couple of
9 them from you, and that's -- that's the latest
10 one. All right.

11 Why don't we go to Waste now, which is
12 page 183, is it? Okay, on Waste. Nothing from
13 the Applicant? Okay. Because we have four
14 conditions -- let's see, how about -- how about
15 the timeframes, because you have one in WASTE-2,
16 which is 60 days. Is that a timing issue?

17 Okay. I just have a little column now
18 that I've got.

19 Mr. Chapman, did you have anything on
20 this?

21 MR. CHAPMAN: No. There -- I would just
22 bring to everybody's attention, under the project
23 site description, the fact that this is one
24 chapter that correctly describes the site.

25 HEARING OFFICER SHEAN: Hurray, they

1 finally did it. Okay.

2 (Laughter.)

3 HEARING OFFICER SHEAN: All right.

4 Well, since there appear to be no issues there, I
5 will indicate that there's no requests for having
6 witnesses appear on that.

7 Now, apparently our Transmission System
8 -- is it System Engineering or Safety and
9 Nuisance?

10 MS. DAVIS: Safety and Nuisance.

11 HEARING OFFICER SHEAN: Safety and
12 Nuisance Staff member is here, and we might as
13 well keep going until we get hungry enough to
14 stop. So if you don't mind, we'll take that topic
15 now. And that is on page 143.

16 I actually have a couple of questions
17 here both on electromagnetic fields and radio
18 interference.

19 And let me ask you this, Mr. Chapman, do
20 you -- does the Yacht Club operate -- I've been a
21 boat owner, but not a large boat owner, but I used
22 to be an aircraft owner, so I'm used to flying
23 into an unfamiliar airport and being able to call
24 the FBO up on the radio. Now, do you -- and do
25 you have -- and I don't know whether it'd be

1 called a Harbormaster, or that type of radio
2 communication available to boats that would use
3 your facility?

4 MR. CHAPMAN: Yes, we do. From -- from
5 a lookout position on the ferry.

6 HEARING OFFICER SHEAN: Okay. So -- and
7 so you have a -- do you have a designated
8 frequency that is -- is for you, that you monitor?

9 MR. CHAPMAN: That we monitor, yes.

10 HEARING OFFICER SHEAN: Okay. I guess
11 my question, then, would be do you think to your
12 satisfaction we have covered the issues with
13 regard to radio interference, both receiving and
14 transmitting, and I would also ask the question,
15 does anything about the location of the
16 transmission cause some potential concerns on
17 Loran or GPS navigations?

18 MR. ODOEMELAM: No. The impacts would
19 be for -- I believe to modulated, and signals, but
20 not the frequency like FMs and signals that they
21 will use. There will be no impacts.

22 HEARING OFFICER SHEAN: Okay. Are you
23 generally satisfied that you think things are
24 going to be all right? I'm not sure --

25 MR. CHAPMAN: Well, I'm not -- I don't

1 have a clue whether things will be all right or
2 not. But it appears that the issue is -- has been
3 addressed in the conditions, and that, you know,
4 they more or less say if there is a problem then
5 it'll be required to be fixed. I -- I can be
6 comfortable with that.

7 HEARING OFFICER SHEAN: You're happy
8 with that. Okay.

9 Yes, sir.

10 MR. ODOEMELAM: That's Staff --

11 MR. WORRELL: The issue came up in the
12 Applicant's original proposal, not under
13 transmission lines, but under equipment. And the
14 Energy Staff transferred it to the energy lines.
15 In the documentation it says that if there's a
16 problem with the energy lines it's usually caused
17 by a cut in the line, or something, and you'd deal
18 with that directly with the FCC. That was while
19 it was with the lines.

20 The original reason for questioning the
21 radio interference was the generating plants. In
22 the original documentation, the presentation --
23 I'm not sure of all these names -- with the two --

24 MR. CHAPMAN: The AFC.

25 MR. WORRELL: -- big books, they have

1 that from the generators, you have no -- no radio
2 transmission within 100 feet, and blah, blah,
3 blah. And we're right on the outskirts of those
4 -- of those figures. And I thought we would
5 address that under -- I'm not sure if it's under
6 equipment or plant operation, but it's in another
7 area. And somehow it got misinterpreted, because
8 it was a big concern of the Yacht Club, it got
9 misinterpreted to the -- to the lines.

10 HEARING OFFICER SHEAN: Well, if the
11 effect is the same, which is your radio, both
12 receiving and transmitting, will be addressed if
13 there is interference, you know, you have --

14 MR. WORRELL: What we're doing --

15 HEARING OFFICER SHEAN: -- a before and
16 after picture pretty good here.

17 MR. WORRELL: What we're doing, I don't
18 know what this -- is this is legal, but it's
19 moral, is we've established radio communications
20 with commercial people in the water, such as
21 Blackfin Salvage and Ferry Carnavero with -- so
22 that we have an idea of what our radio range is at
23 this point in time. And I don't know if it's a
24 legal thing, maybe we need some sort of
25 documentation other than our radio log, but we're

1 establishing what our radio capacity is at this
2 point, and so that if there is a problem with the
3 lines we can address it.

4 But -- but the initial concern of the
5 radio interference wasn't with the lines, but with
6 the generating equipment.

7 HEARING OFFICER SHEAN: Okay. If I
8 understand, Mr. Chapman, speaking today, you're
9 sufficiently comfortable with the condition that
10 it -- that it will cover radio interference,
11 should it occur?

12 MR. CHAPMAN: Yes.

13 MR. WORRELL: What about TV
14 interference? Is that --

15 HEARING OFFICER SHEAN: That's the same.

16 MR. WORRELL: -- is that --

17 MR. CHAPMAN: It's the same issue.

18 MR. WORRELL: -- it's a different
19 module. I don't know if you're the gentleman that
20 called me on the phone and told me it was a
21 different frequency.

22 MR. ODOEMELAM: Oh, yeah, I think I
23 talked with you.

24 MR. WORRELL: But the TV's a different
25 frequency than marine radio bands. Are the lines

1 going to interfere? Dr. Orensen was talking to me
2 on his cell phone yesterday, day before yesterday,
3 went underneath power lines, and his phone quit
4 working. So I don't know, I can accept the fact
5 that the -- that the marine radio won't be
6 affected by the transmission lines, but what about
7 our TV set, which operates off of an antenna, not
8 a cable.

9 MR. ODOEMELAM: That will interfere with
10 your TV and AM radio.

11 HEARING OFFICER SHEAN: The condition --

12 MR. ODOEMELAM: And if --

13 HEARING OFFICER SHEAN: -- addresses
14 complaints of interference with radio or
15 television signals, or radio communication.

16 MS. DAVIS: From operation of the
17 proposed line.

18 HEARING OFFICER SHEAN: Okay. Well --

19 MR. ODOEMELAM: Yeah. The problem is
20 from the lines. We don't anticipate that from
21 generation.

22 MS. DAVIS: If there is --

23 MR. CHAPMAN: Should it -- should it be
24 from operation of the plant?

25 MR. WORRELL: Do we need to do some sort

1 of documentation that we can get Channel 3 and
2 Channel 13 and Channel 10 and Channel 20 at this
3 time, and -- and if we can't get them when the
4 plant goes in operation, if it goes in operation,
5 then we -- we come back and ask for mitigation?

6 MR. VARANINI: Just -- just add cable to
7 that list.

8 HEARING OFFICER SHEAN: I don't know
9 that --

10 MR. WORRELL: I'm sorry, what did you
11 say?

12 MR. VARANINI: Just add cable to that
13 check list.

14 HEARING OFFICER SHEAN: Yeah. We'll --
15 I don't know that --

16 MR. WORRELL: Really? All right.

17 (Laughter.)

18 HEARING OFFICER SHEAN: We'll get you a
19 satellite dish and all the setup.

20 (Laughter.)

21 HEARING OFFICER SHEAN: All right. Just
22 put it on the wish list. Okay.

23 We think we've got it covered. Every --
24 every part of that. You're entitled under the FCC
25 rules to not be subjected to interference, so

1 you're covered for TV, radio, and all that kind of
2 stuff.

3 MS. DAVIS: Is it covered by this
4 condition, or is --

5 HEARING OFFICER SHEAN: Yes, I think
6 it's adequately covered by that. I'll look into
7 the idea of whether we -- for proposed line or
8 proposed project, but one way or the other, we'll
9 make sure you're covered.

10 MR. ODOEMELAM: And if there were to be
11 any problem, it would be from the line.

12 HEARING OFFICER SHEAN: My -- my belief
13 is that the generator itself is shielded
14 sufficiently that it's not going to be causing a
15 problem. So it's only from basically the terminal
16 on the generators and once you get an exposed
17 wire.

18 Okay. So we will put Transmission
19 System -- or Transmission Line Safety and
20 Nuisance, that you don't have anything --

21 MR. CHAPMAN: No, I do have something.

22 HEARING OFFICER SHEAN: Oh, you do have
23 something further.

24 MR. CHAPMAN: Yes.

25 HEARING OFFICER SHEAN: Okay.

1 MR. CHAPMAN: Yes, but not this
2 particular item.

3 HEARING OFFICER SHEAN: All right.

4 MR. CHAPMAN: The -- what I have is
5 under -- on page 149, where you talk about
6 setting. And in the first paragraph, you have a
7 -- a comment near the bottom of the paragraph,
8 where you say, since the project site is not open
9 to the general public. And then you go on to make
10 assumptions based upon that.

11 Well, this line, this transmission line
12 is proposed to be 25 feet away from our property
13 line, where we're going to have activity --
14 activities that will include 170 families and
15 their -- and their guests. There -- now, that's
16 going to occur throughout the year. Now, I'll
17 give you the fact that that, under another
18 conversation, that may not be considered general
19 public. But you indicate that the only concern or
20 -- would be to the employees, because of their
21 short term exposure.

22 Well, these families will be on this
23 property on a regular basis and throughout the
24 year. How does -- how does that affect your
25 comment that it's short term exposures?

1 MR. ODOEMELAM: That statement is --
2 that deal with the point at issue with respect to
3 this health impacts concern. That's only for
4 residential exposures. Those are the ones about
5 which concerns exposure, not a short term
6 exposures. So I indicated that since the facility
7 will be closed to the public, there will be no
8 residential exposure, which is the reason for the
9 health concerns, long term residential exposures,
10 not a short term exposures. So that's why I made
11 that distinction.

12 MR. CHAPMAN: Okay. But you indicate
13 that the only short term exposures will be to the
14 utility and non-utility workers at the site.
15 That's not correct. We will have a lot of short
16 term exposures to all of the people that visit the
17 Sportsman's facility.

18 MR. ODOEMELAM: The health concern isn't
19 over short term exposure. That's the distinction.
20 The health concern is over long term residential
21 exposures. The short term exposures are not an
22 issue of concern.

23 MR. CHAPMAN: Okay.

24 MR. WORRELL: You're talking about what
25 -- what regular people call ion --

1 MR. ODOEMELAM: No.

2 MR. WORRELL: That's something
3 different. You're not talking about --

4 MR. ODOEMELAM: No, we're dealing with
5 impacts from the project.

6 MR. CHAPMAN: All right. There -- the
7 caretakers facilities that are onsite, that are
8 residential units, they won't have any impact, or
9 this won't have any impact upon them?

10 MR. ODOEMELAM: No, those kinds of
11 exposures have not been established as a reason
12 for concern at this point. Again, the only reason
13 we're concerned about EMF exposure is long term
14 residential exposures. And actually, if you look
15 closer, it's the children.

16 MR. WORRELL: But you're talking about
17 magnetic field, not ion bombardment.

18 MR. ODOEMELAM: No, the ions -- ion
19 effects from a facility like this is not an issue
20 in this case.

21 (Parties speaking simultaneously.)

22 MR. WORRELL: You're not talking about
23 ions, you're talking about the magnetic --

24 MR. ODOEMELAM: -- what a facility
25 produces, which is electric magnetic field.

1 HEARING OFFICER SHEAN: The answer is
2 he's talking about electromagnetic fields.

3 MR. CHAPMAN: Okay. But in -- under
4 general impacts, you talk -- you do talk about the
5 secondary concern being the nuisance shocks, the
6 radio noise -- back to that -- and something
7 called human field exposure. There -- just a
8 quick feeling, or question. Under the nuisance
9 shocks. Vehicles parked along the fence line of
10 the Sportsman property, which now are directly
11 underneath this proposed line, are -- would those
12 vehicles be subject to a nuisance shock as far as
13 any field being induced into them? And I'm
14 thinking of the, you know, the static electricity
15 that you get pounded with as you get in and out of
16 the car. Will that increase at all because of
17 these --

18 MR. ODOEMELAM: Conceptually, yeah. But
19 there again, minimum -- the possibility of that
20 depends on the height of the line. The ability to
21 induce those shocks on the vehicles. There are
22 specific requirements for minimum heights that
23 will be required be complied with.

24 MR. CHAPMAN: Okay.

25 MR. ODOEMELAM: That's specified under

1 GEO-95, for this and other such lines. It's
2 nothing really special about this line in that
3 sense. There are specific minimum height
4 requirements for all such lines.

5 MR. CHAPMAN: Okay. That brings me to
6 -- to the next issue, is on page 150, you talk
7 about fire hazard. The -- the Visual Resources
8 specialist has included a condition of compliance
9 to put in a row of trees directly underneath this
10 proposed power line. There -- those trees are
11 predicted that when they're -- when they are of
12 use, or when they start doing their mitigation,
13 that they'll be some 40 feet tall. Yet there's a
14 reference in the -- in the Visual Resources part
15 that refers to having to keep the trees trimmed
16 away and things from the line.

17 Well, your -- and I'm going to come
18 around to it. There -- are you aware of these
19 trees being associated with this line?

20 MR. ODOEMELAM: Not -- not directly, but
21 there are specific requirements under General
22 Order 95, that set specific minimum distances from
23 --

24 MR. CHAPMAN: Okay. So your specific
25 minimum distances, and here's -- here's to the

1 point. Your specific minimum distances are going
2 to require these trees to be trimmed to a point
3 that they're ineffective.

4 MR. ODOEMELAM: That they are not close
5 enough to cause a hazard of -- of fire. These are
6 --

7 MR. CHAPMAN: Okay. The predicted --
8 the predicted height for effectiveness of these
9 trees will be to a height that exceeds what you
10 will allow for -- for minimum clearances. Are you
11 aware of that?

12 MR. ODOEMELAM: The owner is not
13 allowed, by law, to have these trees to get closer
14 to specific distances that are specified in the
15 General Order of PUC. This is -- this applies to
16 this line and any other line.

17 MS. DAVIS: This is probably something
18 that should be discussed in the Visual section.

19 MR. CHAPMAN: There -- excuse me?

20 MS. DAVIS: I'm thinking that this may
21 be will be discussed in Visual Resources.

22 HEARING OFFICER SHEAN: Sure. But he --
23 he --

24 MR. CHAPMAN: Well, I --

25 HEARING OFFICER SHEAN: -- he can

1 establish --

2 MR. CHAPMAN: -- there -- this man has
3 the specialty of the transmission line. The --
4 the visual man is going to say oh, that was his --
5 his job to know what the rules and regulations are
6 on that. And if this man can -- can give us input
7 here, I think we need it.

8 There -- with the siting of this line
9 and its relationship to the property line, is
10 there a regulation that's going to affect a
11 dredging operation on my property, where a crane
12 would be on my access road along that fence line
13 that's some 25 feet away from this? Am I going to
14 have restrictions put on me, or on my crane
15 operators?

16 MR. ODOEMELAM: There are restrictions
17 put on you by law that will ensure that -- now,
18 that's for people who work -- workmen who work
19 around the line. There are restrictions as to how
20 close they can get to the line, that are operating
21 cranes or anything that has potential for contact.

22 MR. CHAPMAN: And what is that distance?

23 MR. ODOEMELAM: There are -- let me show
24 you. It's on -- well, they're not specific
25 distances that are in this -- they're not -- we

1 don't specify them distance by distance in this --
2 in this Conditions of Certification. But they are
3 under the -- under the conditions that we specify.
4 Which is, in this case -- it's a law in the -- in
5 the code, I think it's about four pages, that
6 specifies the distances, and that's what the
7 Applicant --

8 MR. CHAPMAN: And what is that code
9 number?

10 MR. ODOEMELAM: That is Title 8,
11 California Code of Regulations, and it's Sections
12 2700 to 2974. It lists all the distance
13 requirements.

14 MR. CHAPMAN: You -- do you have that
15 referred to in your --

16 MR. ODOEMELAM: Yeah, it's in the --

17 MR. CHAPMAN: -- report?

18 MR. ODOEMELAM: -- in the very first
19 condition for certification.

20 MR. CHAPMAN: That's what page? I'm
21 sorry.

22 MR. ODOEMELAM: Title 8, the first
23 condition for certification.

24 MR. CHAPMAN: Oh. Oh, okay, thank you.

25 MR. ODOEMELAM: Title 8 has all the

1 distance and requirements. It's pretty -- it's
2 pretty involved.

3 MR. CHAPMAN: Okay.

4 MR. ODOEMELAM: This is intended to
5 avoid any electrocution hazard for workers who do
6 any kinds of construction, laying pipes or working
7 around anything around the line, when the line is
8 operational.

9 MR. CHAPMAN: Okay. What I want to
10 propose is a condition of certification to -- that
11 would avoid these problems, and that would be that
12 you require undergrounding of the transmission
13 lines along the east property line of the plant.

14 MR. ODOEMELAM: We also have in these --
15 in the GEO-95, there are specific requirements for
16 grounding, specific requirements. Again, these
17 codes are very --

18 MR. CHAPMAN: No, I'm not talking about
19 grounding. I -- I want a condition of
20 certification that you require the undergrounding
21 of these lines.

22 MR. ODOEMELAM: Oh, to put -- to put it
23 -- okay. You have to come up with a reason for
24 that. We have to have a specific reason for --

25 MR. CHAPMAN: The -- well, the reason --

1 HEARING OFFICER SHEAN: Yeah. No, we
2 understand, and -- that's the pitch they are going
3 to make when you get your hearing opportunity.
4 Right.

5 MR. CHAPMAN: Okay. That's all I have.

6 HEARING OFFICER SHEAN: Okay. Well,
7 then we'll add that to the list of contested
8 topics.

9 Can you -- do you know what the
10 clearance requirement is specifically in numbers
11 of feet for trees that would be near the proposed
12 power line?

13 MR. ODOEMELAM: It's -- it's in my
14 office. It's all listed, it's --

15 HEARING OFFICER SHEAN: All right.

16 MR. ODOEMELAM: -- the Applicant --

17 HEARING OFFICER SHEAN: Well, be
18 prepared to bring that number and the number for
19 working near the transmission lines.

20 Okay. Thank you.

21 All right. Shall we knock out one more
22 topic and then go to lunch? Do you want to start
23 with Facility Design? That probably has a lot of
24 things that you want to work with -- 441. Who is
25 here that -- okay. All right. This engineering

1 stuff is so much fun.

2 Is there anything from the Applicant?

3 Do we want to --

4 MR. STONE: Good morning. My name is
5 Mark Stone, and I'm with the Mirant Corporation,
6 out of Atlanta, Project Management Director.

7 GEN-1, we're going to talk about a
8 little bit. In there, under protocol, you talk
9 about in the event that Unit 8 is submitted to the
10 CBO, Chief Building Official, for Contra Costa
11 County, when a successor to the 1998 CBC,
12 California Building Code, is in effect, the 1998
13 CBC provisions identified herein shall be replaced
14 with the applicable successor provisions. And
15 then it goes on to talk about wherein specific
16 cases.

17 Having not built plants before in
18 California specifically, I may be -- be out a
19 little bit on the protocol for California
20 specifically, but generally accepted engineering
21 and design practice is that once you establish a
22 building code at the beginning of the project,
23 that code remains in effect throughout the entire
24 project. Typically, these codes do not change
25 from year to year. It's usually only over long

1 periods of time that the -- the codes in
2 particular change.

3 So on the surface, this doesn't appear
4 to be particularly onerous, because it's unlikely
5 that the 1998 CBC -- and the main focus here is
6 the seismic, and I think the '98 version of the
7 CBC incorporates a lot of the seismic things that
8 we learned from the earthquakes and CoBay, and the
9 like.

10 But the problem I have is the CBC is --
11 is based upon a document called the UBC, the
12 Uniform Building Code, which is predominantly used
13 in the U.S. and other sections of the world.
14 There's a second code that a lot of us down south
15 use, called the SBC, or the Southern Building
16 Code. Because both of these U.S. codes are used
17 internationally, there has been, among engineering
18 professionals, a merging of the two codes.
19 They've been referred to a committee, and they're
20 going to take the traditional UBC and the SBC, and
21 make a new single code called an IBC, the
22 International Building Code. So they'll get rid
23 of this inconsistency among states, to some
24 extent.

25 I would suspect that once that is done,

1 that California will take a close look at that and
2 may pattern and revise the 1998 CBC.

3 The -- the problem that I have, as an
4 engineer and as a designer, is that if I start to
5 design the plant using the 1998 CBC, and we're
6 down to startup, and all of a sudden we get a 2002
7 issue of the CBC, I may have to redesign the
8 entire plant for seismic reasons. And, you know,
9 the implications of that are, in effect, that I've
10 wasted all my work up until that time and have to
11 start over again.

12 I have never seen a circumstance where
13 I'm required to start on a code, and then if the
14 code changes, retrofit to use the new code, with
15 the most onerous of the two conditions.

16 So I would ask that we reconsider, and
17 -- and I have no problem with the 1998 CBC. We
18 clearly understand what that is. We're working
19 with Mr. Baldonado at the -- at the CBO office
20 here in Contra Costa County, and -- and have
21 things pretty well lined up.

22 But this aspect of -- of code change,
23 particularly in light of the fact that the UBC
24 looks like it's going to change within the next
25 year or so, is of concern to us.

1 HEARING OFFICER SHEAN: My basic
2 understanding was that the -- you know, absent
3 something extremely compelling, that as of
4 essentially the date of the submission of your
5 plans to the CBO, that sets the criteria under
6 which your project is started. Is your
7 understanding different from that?

8 MR. STONE: If -- if that interpretation
9 of this wording is confirmed, I really don't have
10 a problem with that. My problem goes away. My
11 concern is that my interpretation of what --
12 doesn't -- it seems rather specific to me.

13 HEARING OFFICER SHEAN: Okay. So we
14 just need to clarify it as to whether or not -- to
15 remove from your concern that during the pendency
16 of construction, that a revision of the CBC will
17 occur which would require you to significantly
18 alter some aspect of already built, or already
19 designed --

20 MR. STONE; Right. Seeing as how I've
21 already submitted documents to Mr. Baldonado for
22 preliminary evaluation at this point, and
23 everything that we've done to date is -- is on --

24 MS. DeCARLO: And my understanding of
25 the condition is that once -- once things are

1 submitted to the CBO, that -- that locks in the
2 provisions. However, we can confirm that with our
3 Staff, and get back to you.

4 MR. STONE: That is from the first
5 document, right. Once that first document goes
6 in. Because I'm going to be submitting documents
7 throughout this two-year period, right?

8 HEARING OFFICER SHEAN: Correct.

9 MS. DeCARLO: We'll confirm that.

10 HEARING OFFICER SHEAN: Yes. Yes, you
11 will be. Right. And, yes, it's -- it's the -- my
12 belief would be it's -- what traditionally has
13 been the application for the permit and is now
14 whatever in lieu document you start the process
15 with the CBO with.

16 MR. STONE: Right. Right. That's --
17 that's as far as I can make it. Thank you very
18 much.

19 HEARING OFFICER SHEAN: Okay. We'll
20 find that out and get back during the pendency of
21 these workshops.

22 Okay. Anything other than that on the
23 -- the --

24 MR. VARANINI: Nothing more.

25 HEARING OFFICER SHEAN: Pardon me?

1 MR. VARANINI: Nothing more.

2 HEARING OFFICER SHEAN: Nothing more.

3 Mr. Chapman.

4 MR. CHAPMAN: Two quick things. There
5 -- under the major equipment list, on page 451,
6 they -- the Table 1 major equipment list there,
7 they list one -- one ammonia storage tank, yet in
8 the -- under Hazardous Waste, we're provided with
9 drawings and things that indicate three tanks.

10 MR. STONE: Correct. There -- the -- I
11 think that the confusion comes from the fact that
12 there are two, or there will be two existing
13 ammonia storage tanks in the same facility before
14 we begin construction. And those service the
15 existing Units 6 and 7, at Contra Costa.

16 We are retrofitting selective catalytic
17 reduction air pollution control equipment onto the
18 existing two units in operation at Contra Costa
19 Units 6 and 7, so when we designed the ammonia
20 storage facility, this hazardous chemical storage
21 facility, when we permitted that with the local
22 authorities here for the selective catalytic
23 reduction retrofit projects, we had designed it in
24 a manner to expand by a third tank associated with
25 the new construction. But apparently we have not

1 made it clear that there will only be one tank,
2 one pump, and -- and the like, associated for the
3 new Unit 8, and that those other tanks that Mr.
4 Chapman sees are associated with the existing
5 facility.

6 MR. CHAPMAN: Who -- who permitted those
7 other tanks?

8 MR. STONE: You'll have to help me a
9 little bit here, Ron.

10 MR. KINO: Yeah. We have -- through the
11 local Bay Area Air Quality Management District, we
12 have an ATC through them, authority to construct,
13 for this pollution control equipment.

14 MR. CHAPMAN: Okay. There -- and they
15 -- they provide all the permitting required to do
16 that, or -- the reason I ask is that -- is in
17 contacting the county, the county hazardous waste
18 people say they haven't present -- we don't know
19 anything about these ammonia tanks. We know about
20 the one proposed for Unit 8. But they say they
21 don't know anything about the ones proposed for
22 the other side.

23 MR. KINO: We have had contact with the
24 county.

25 MR. CHAPMAN: The -- the only other item

1 I have is on CIVIL-2. And this is just -- and
2 maybe that's a standard thing, and I'm just going
3 to ask about it. But under CIVIL-2, under
4 verification, it says that within five days of
5 when -- when work is stopped, if -- that just
6 seems excessive. If something happened to the
7 extent that work is stopped, I don't know, I --
8 five days seems -- excuse me?

9 MR. VARANINI: Like an earthquake.

10 MR. CHAPMAN: Yeah. This -- five days,
11 if it's bad enough to stop work, it seems like
12 five days is excessive for notification. And I --
13 I'll leave that to you all, but it's just a
14 comment on my part.

15 HEARING OFFICER SHEAN: Well, on the
16 face of it, that's a good question.

17 MR. STONE: Normally, we'll notify
18 immediately. The only thing that I can even think
19 of is if you had something happen late Friday, and
20 you can't get ahold of the office Saturday and
21 Sunday. But it certainly seems reasonable to me
22 that three days, calendar days, or one business
23 day, is -- is a reasonable number there for --

24 HEARING OFFICER SHEAN: Anything other
25 than that?

1 MR. CHAPMAN: That's -- that's it.

2 HEARING OFFICER SHEAN: Okay. Well,
3 subject to clarification that we've talked about
4 here, and maybe consideration, again, back at the
5 Commission, of --

6 MR. CHAPMAN: Can I back up on -- on my
7 --

8 HEARING OFFICER SHEAN: Sure.

9 MR. CHAPMAN: There -- I am concerned
10 that we don't have a plan that is identified as
11 what we're moving forward with, as far as a layout
12 plan for the facility. There --

13 HEARING OFFICER SHEAN: Well, let me
14 just back up here --

15 MR. CHAPMAN: Okay.

16 HEARING OFFICER SHEAN: -- because I
17 have already requested the Applicant to put
18 together what is the current, the latest and
19 greatest version of a plot map, so that we -- we
20 can be working from that. Because I -- my
21 understanding is over time, things have changed,
22 and the one that was in this document, for
23 example, I understand, showed the turbine
24 building, and now it's not a building, and there
25 are a few other things. And so we're, as I say,

1 trying to get the latest and greatest, and we'll
2 work from that.

3 Okay. If there's nothing other than
4 that, I will -- we'll consider our Facility Design
5 to be uncontested, and --

6 MR. WORRELL: I have one --

7 HEARING OFFICER SHEAN: Yes.

8 MR. WORRELL: -- two that might possibly
9 related questions.

10 HEARING OFFICER SHEAN: Okay.

11 MR. WORRELL: One is on the ammonia
12 storage tank that aren't there for the project,
13 they are there, how is it, the accumulative effect
14 of this ammonia taking place, when in fact there's
15 no ammonia there now. It seems to me it's silly
16 to build two tanks and two months later build
17 another tank to it, and I -- if I understand it
18 right, this -- all the underground place for all
19 the bad stuff to go, if there's a catastrophe, is
20 going to be in place for the three tanks. But how
21 does this ammonia -- how is this going to affect
22 the -- under the Air Quality, the accumulative
23 effect, when we don't have any accumulative
24 effects for the 60, or the 40 -- 40,000 gallons
25 that isn't there yet, but in the plan it is there.

1 How does that -- how does that --

2 HEARING OFFICER SHEAN: Are you asking
3 whether there's an effect from the storage of the
4 ammonia?

5 MR. WORRELL: Well, in the -- the way I
6 understand the plan, and I think it comes under --
7 under Air, instead of here, but there -- they talk
8 about the accumulative effect of ammonia. And the
9 way I read it in the proposal is there's already
10 40,000 gallons there, and they're only going to
11 add 20,000 gallons. And there's no way to have --
12 in my little brain, there's no way to have the
13 accumulative effect.

14 Do you see what I mean? There -- they
15 talk in the plan as though they're already
16 squirting ammonia into the existing smoke stacks,
17 but they're not. And then they talk about the
18 accumulative effect of the ammonia with the Plant
19 8. And I -- I have trouble --

20 MR. CHAPMAN: And -- and don't recognize
21 -- and I'll -- this is probably getting -- has to
22 come up under another chapter, but the -- what
23 Bill's getting to is the fact that -- well, it
24 needs to come up later. It --

25 MR. WORRELL: Well, the tanks aren't

1 there, and they are there.

2 MR. CHAPMAN: -- the cumulative effects
3 are considering -- don't consider the fact that 6
4 and 7 aren't using this equipment yet.

5 HEARING OFFICER SHEAN: Okay. Now, are
6 you talking about in terms of the handling and
7 storage of the ammonia, or in terms of the --

8 MR. CHAPMAN: No. The air quality.

9 HEARING OFFICER SHEAN: -- release
10 through the -- the ammonia slippage.

11 MR. CHAPMAN: Right. That -- I
12 understand this is the wrong spot, but --

13 HEARING OFFICER SHEAN: Okay. I --

14 MR. CHAPMAN: -- I'm trying to help Bill
15 ask his question.

16 HEARING OFFICER SHEAN: That is a help.
17 Okay.

18 MR. WORRELL: Okay. So that -- so it
19 will be addressed under Air.

20 HEARING OFFICER SHEAN: We -- we will --
21 correct.

22 MR. WORRELL: Okay. In the original
23 proposal, the two big white books, it stated that
24 Southern was going to contact the Antioch Planning
25 Department as a courtesy and show them, with

1 grading plans, and present their plan to the
2 Planning Department for, like I guess an advisory
3 approval, even though it wasn't legally required.
4 But it was stated in those -- in that initial
5 proposal. Is that still your plan to do that?

6 I'm going to have to research it tonight
7 to come up with the pages and stuff.

8 MR. VARANINI: Do we have any
9 correspondence with Antioch Planning Department,
10 that you know of?

11 MR. STONE: I -- I can't recall. We
12 could certainly --

13 MR. VARANINI: We'll have a response for
14 you by the time --

15 HEARING OFFICER SHEAN: Sure. But we're
16 well down the road, I guess is the only other
17 thing to say.

18 MR. WORRELL: Well, I keep asking the
19 planner has he got the grading plot yet, and he
20 keeps saying no. And -- that was -- I'm going to
21 have to -- just like they are, if you want it
22 specific, I have to go back to it tonight.

23 HEARING OFFICER SHEAN: Okay. I don't
24 know they didn't have the grading plans at this
25 particular point.

1 MR. WORRELL: Well, they couldn't -- I
2 don't think they could have grading plans when
3 they don't have a site. But are they going -- are
4 they going to, as a good neighbor gesture, still
5 contact the Antioch Planning Department with -- as
6 the project goes along, to -- to see if it's
7 conforming or coming in the sphere of influence
8 and the -- the general thought of the -- of the
9 Antioch General Plan?

10 That's what I read in the original
11 document. And I think this is the place that it
12 should be covered, but I --

13 HEARING OFFICER SHEAN: Yes. I mean,
14 what -- what we anticipate, at least from the
15 Commission's point of view, is the grading plan
16 would go to the CBO, and that the CBO, who will be
17 a county official, will review it. Now, where it
18 goes beyond that, I don't know.

19 MR. WORRELL: Wasn't -- isn't it a
20 commitment that the LLD has to make the commitment
21 to do it as a good neighbor to Antioch?

22 HEARING OFFICER SHEAN: Well, they may
23 choose to do it, but, I mean, I don't believe that
24 it's appropriate to have a secondary approval in
25 the process from the Antioch Planning Department,

1 or any other department within the City of Antioch
2 for a grading plan. I mean, this is just a matter
3 of where you're going to shove the dirt and how
4 the --

5 MR. WORRELL: Well, it's not, because
6 they're going to raise it up to ten feet --
7 between -- they say three feet, I read it ten feet
8 above our existing -- our existing property. So
9 all of a sudden, grading becomes an issue to us.

10 (Inaudible asides.)

11 MR. STONE: The -- the intent of the
12 document, and I have to go back and make sure that
13 the document is written clearly, but the intent on
14 the ten is ten feet, the finished grade of the
15 plant would be ten feet above, I believe it's mean
16 sea level. It's a reference to a -- a standard
17 sea level benchmark. Actual, in that area, will
18 be about three to four and a half feet, depending
19 upon where in that -- in that in situ plot plan
20 that you are, and the idea there was to bring the
21 level above the flood plain, which is nine feet,
22 the -- the high flood number was about nine feet.
23 So we wanted to get the base of the plant up about
24 a foot above that.

25 HEARING OFFICER SHEAN: Okay. We can do

1 one more before we go eat. How do people feel
2 about that?

3 All right. Let's --

4 MR. CHAPMAN: Are we -- are we reserving
5 this until we get the plot -- the layout plan?

6 HEARING OFFICER SHEAN: Yeah, we can
7 leave that open. But, I mean, I -- I think the
8 explanation with respect to the grading plan
9 aspect of this, we'll --

10 MR. CHAPMAN: No. There -- it has to do
11 with the layout of the plant itself. But not
12 knowing which -- which plan we're working off of,
13 I can't get into it too much.

14 HEARING OFFICER SHEAN: Sure. My
15 general view is that probably all the facility
16 siting -- Facility Design aspects would apply
17 whether it was planning or -- because they're not
18 plan specific. But I understand the nature of
19 your concern. Okay. With respect to what is the
20 final plot. All right.

21 How about let's do Transmission System
22 Engineering, because you had a -- an issue here
23 with regard to DWR. That is page 45.

24 MR. HARRER: Yeah, we do have some
25 concerns. Let's see. Yeah, question number one,

1 or -- excuse me, I'm sorry.

2 HEARING OFFICER SHEAN: Here. Our mic
3 has gone away.

4 MR. HARRER: Mark Harrer, from Mirant
5 Corporation.

6 We have some questions on Condition of
7 Certification Number 1, which refers to some
8 issues regarding DWR pumps. Mr. Bob Weatherwax
9 will address the issue.

10 MR. WEATHERWAX: Hi, my name is Bob
11 Weatherwax, from Sierra Energy, and I'm a
12 consultant to Mirant.

13 And we're quite unclear as to the
14 source, and kind of the motivation for the
15 paragraph number 5, on page 494, which says to
16 look at the impact upon the DWR pumping units. We
17 think most of those are served at less than 70 kV,
18 and that there's essentially no potential impact
19 there. I mean, you know, anytime you -- anytime
20 you turn on your refrigerator, there's a little
21 pulse that permeates the grid, if you -- if you
22 wanted to say that, but no one cares about it.
23 And we're not sure whether somebody's addressing
24 some sort of a very modest transient or whether or
25 not there's a -- this is a standard for any unit

1 in the Delta, based on some experience with some
2 other unit, or -- at any rate, the raison d'etre
3 is -- is a question to us.

4 MS. DAVIS: Are you familiar with the --
5 have you seen the letter from Department of Water
6 Resources requesting that we look into this? It's
7 in --

8 MR. WEATHERWAX: No, no. I -- I did
9 look at the back to try to -- I don't think that's
10 found in it, is it?

11 MS. DAVIS: Yes, I -- well, I believe it
12 is. It should be in the back of response to
13 public and agency comments.

14 MR. CHAPMAN: That wasn't included in
15 this chapter.

16 MR. WORRELL: It came as a separate --

17 MS. DAVIS: Okay. That's where it
18 should've been. And --

19 MR. WEATHERWAX: Oh, okay. Yeah, it --
20 no, I'm unfortunately not. I did check back there
21 for it.

22 MS. DAVIS: And it was included as an
23 attachment to those who received the mailer. I
24 can certainly get a copy to you, but -- why don't
25 I give you a copy right now. It may have been an

1 attachment to what you received.

2 Apparently this was also a concern in
3 another case, but I don't recall which one it was.
4 And they resolved it in the same manner, with a
5 Condition of Certification.

6 MR. WORRELL: We've got to keep that
7 water going south.

8 MS. DAVIS: We also see that -- that the
9 author of the Transmission System Engineering
10 section makes reference to it on page 493.

11 MR. WEATHERWAX: Okay. So it's a fault
12 current issue then, I guess.

13 MR. HARRER: We can certainly have Bill
14 look at it and figure it out very quickly.

15 HEARING OFFICER SHEAN: Sure. Why don't
16 --

17 MR. WEATHERWAX: Yeah. I -- now, the
18 detailed facility study, of course, deals with
19 fault currents and -- and short circuit coverage.
20 And certainly we can do this. It looks like --
21 and certainly, I think the analysis, as it -- as
22 it's written, indicates that there's no
23 transmission capability impacts on the -- the
24 bank's pumping plant.

25 Now, do you have any idea whether the

1 person who sent this had reviewed the detailed
2 facility study at all, or not. Or was this kind
3 of a response to --

4 HEARING OFFICER SHEAN: Well, look at
5 the date. Does that tell you? August 29th.

6 MR. WEATHERWAX: There was a draft
7 available then. When did -- was that submitted?

8 MS. DAVIS: It was -- we actually
9 received two letters from Department of Water
10 Resources, an original letter that came maybe
11 before the Preliminary Staff Assessment or
12 immediately afterwards, and then another letter
13 before we produced the Final Staff Assessment.
14 Oh, because we had -- we had seen that we hadn't
15 addressed it in the Preliminary Staff Assessment,
16 so I would assume by that time that they had seen
17 the detailed facility study, but I can't say for
18 sure.

19 MR. WEATHERWAX: Okay. Yeah, I think
20 we'll have to take that under advisement, then.
21 Look at that.

22 HEARING OFFICER SHEAN: Right. I don't
23 think we're going to be able to run this one down
24 right now, so let's just continue it.

25 Was there another aspect of --

1 MR. HARRER: Yeah. Our only -- on
2 number 2, our only comment was maybe the -- it
3 looks like the reference to 1A and 1E are in
4 error, it should be one through five, in the
5 second line, TSE2.

6 HEARING OFFICER SHEAN: Yes.

7 MR. HARRER: Right. And then -- and
8 then if that's true, you know, we're dependent on
9 number 5 in TSE1, if that proves to be not an
10 issue it should go away in TSE2 also.

11 And then, let's see, TSE3, what was at
12 issue with that? The GSFA just went in.

13 It's not finalized.

14 HEARING OFFICER SHEAN: Okay. How do we
15 run this matter to ground here? No pun intended.
16 Shortly. How do we do it shortly, right.

17 (Laughter.)

18 HEARING OFFICER SHEAN: I don't know
19 whether or not --

20 MS. DAVIS: It may just be that with a
21 phone call we can mutually understand what the
22 issue is.

23 HEARING OFFICER SHEAN: Okay.

24 MS. DAVIS: And then, of course, if the
25 Applicant disagrees, then we could deal with it.

1 HEARING OFFICER SHEAN: Sure. Why don't
2 we move this on over, then, until Tuesday, and
3 hopefully it'll all away.

4 I think I have a recollection, at least
5 DWR has been fairly active in this in terms of
6 submitting correspondence to the Commission on
7 many of the projects, because we had it in
8 Mountainview, as well, which we just completed.
9 And generally, the final -- the detailed facility
10 studies in the final version have pretty much
11 addressed DWR's concerns.

12 MR. WEATHERWAX: You could -- the Delta
13 facility -- and oddly enough, electrically you're
14 quite a ways away -- sorry. I just say that even
15 though the Delta plant is geographically quite
16 close, electrically it's -- it's quite a ways
17 away, and the effects really will be different,
18 and I -- I think less than even with the Delta,
19 which I don't think was a problem even in that
20 unit.

21 HEARING OFFICER SHEAN: Okay. Let me
22 just poll the Applicant and Mr. Chapman with
23 respect to these remaining ones, which is Worker
24 Safety, Reliability, and Efficiency. Do you have
25 much in any of those areas?

1 MR. HARRER: We have nothing.

2 HEARING OFFICER SHEAN: Okay. How about
3 you, Mr. Chapman?

4 MR. CHAPMAN: I understood the Worker
5 Safety was going to be moved to tomorrow night. I
6 do have something under -- under that. There --
7 and the other two, no.

8 HEARING OFFICER SHEAN: All right.
9 Well, let's just push on, then. We can conclude
10 today.

11 Do we -- do we need -- let's take a ten
12 minute break here, stretch our legs. We'll be
13 back at ten minutes past noon.

14 (Thereupon a recess was taken.)

15 HEARING OFFICER SHEAN: All right, we'll
16 go back on the record.

17 Let's just knock out Reliability and
18 Efficiency, since there -- there may not be
19 anything from any of the parties on this.

20 Let's start with Reliability, which
21 would be at page 469. This particular section did
22 not generate any conditions, so obviously we're
23 not going to have dispute as to conditions, but is
24 there anything any of the parties want to address
25 in this topic area? From the Applicant?

1 MR. HARRER: There was just -- there was
2 a technical point that Mr. Weatherwax mentioned to
3 me on the bottom of page 470. He objected to the
4 last sentence, where -- which begins, power plant
5 systems must be able to operate for extended
6 periods, sometimes months on end, without shutting
7 down for maintenance or repairs.

8 And he wanted to point out that these
9 plants do shut down monthly for rotor washings.

10 (Laughter.)

11 MR. WEATHERWAX: It's true. Every
12 thousand hours it's required, for the warranty.

13 HEARING OFFICER SHEAN: What -- what do
14 you want? How many hours?

15 MR. WEATHERWAX: Every thousand hours of
16 full power.

17 HEARING OFFICER SHEAN: Okay.

18 MS. DAVIS: And how long does rotor
19 washing take?

20 MR. WEATHERWAX: We assume, from the
21 modeling, that it would take like over a weekend.
22 I think you might be able to do it in less than 24
23 hours, if you were really excited.

24 HEARING OFFICER SHEAN: It would really
25 excite me, I tell you.

1 MR. HARRER: That's in the generator,
2 Bob, the exciter.

3 (Laughter.)

4 MR. HARRER: Well, if you were doing it
5 flashlights and were interested in getting the
6 power back on, you might --

7 HEARING OFFICER SHEAN: Okay. So that
8 does appear about every five weeks, because it's
9 going to be at 2,000 hours or so.

10 MR. WEATHERWAX: In full power.

11 HEARING OFFICER SHEAN: Okay. Well,
12 we'll just note that.

13 MR. HARRER: If you're ever on Jeopardy,
14 that's one fact you got off in the deepest part of
15 your subconscious.

16 MR. WEATHERWAX: Let me clarify. We
17 don't need to shut down the plant to do this. We
18 can do them unit by unit. So you can keep the
19 other -- B up all the time when A is down, or
20 vice-versa. And so -- and I certainly assume we
21 would do it that way.

22 HEARING OFFICER SHEAN: Okay. Mr.
23 Chapman.

24 MR. CHAPMAN: One other technical item.
25 There -- at the bottom of page 472, under water

1 supply reliability, they make a reference to City
2 of Antioch providing backup supply. I believe
3 that's been changed, and that's incorrect.

4 HEARING OFFICER SHEAN: Okay. Anything
5 other than that one?

6 MR. CHAPMAN: That was it.

7 HEARING OFFICER SHEAN: Okay. Well,
8 we'll find out whether that needs to be excised.

9 MS. DAVIS: That does need to be
10 changed.

11 HEARING OFFICER SHEAN: Does it?

12 MS. DAVIS: Yeah.

13 HEARING OFFICER SHEAN: Okay. Well, we
14 won't put that in the decision, then.

15 All right. So I'm going to show
16 Reliability coming in uncontested, and not
17 requiring any witnesses to appear.

18 Why don't we flip quickly to Efficiency,
19 which I think is the next topic, at page 477.
20 Pardon me?

21 MR. HARRER: We have no issues.

22 HEARING OFFICER SHEAN: All right.
23 Nothing from the Applicant.

24 Mr. Chapman.

25 MR. CHAPMAN: Can I take this

1 opportunity just to ask a question?

2 HEARING OFFICER SHEAN: Sure.

3 MR. CHAPMAN: There -- on 478, they talk
4 about the efficiency of the new plant. There --
5 and they term it in LHVs, or an LHV fact
6 percentage. Their -- Units 6 and 7, how do they
7 compare to this, LHV percentage-wise?

8 MR. HARRER: You wouldn't compare them
9 that way. You'd compare them on heat rate. This
10 plant is significantly more efficient, the new
11 plant.

12 MR. CHAPMAN: Right. I mean --

13 HEARING OFFICER SHEAN: Sure.

14 MR. CHAPMAN: Okay.

15 MR. WEATHERWAX: If you looked at high
16 heating value, Contra Costa is on the order of
17 10,000, versus this plant, which would be less
18 than 7,000. And so when you go low heating value,
19 multiply that by .9, and about --

20 MR. CHAPMAN: So you -- when you're
21 talking heating value, this is heating value?

22 MR. WEATHERWAX: Well, if you're talking
23 about low heating value, that -- that's enthalpy,
24 instead of entropy.

25 MR. CHAPMAN: Okay. Oh, okay. But the

1 way it --

2 MR. WEATHERWAX: But at any rate, it --
3 they correspond one to the other. One's about 11
4 percent higher than the other.

5 MR. CHAPMAN: Okay. So Units 6 and 7
6 would use a number of like 10,000?

7 MR. WEATHERWAX: That's right, for a
8 high heating value, or about --

9 MR. CHAPMAN: Okay. And Unit 8 would be
10 7,000. So --

11 MR. WEATHERWAX: That's right, for -- so
12 substantially more efficient.

13 MR. CHAPMAN: Okay. So --

14 MR. HARRER: Forty percent.

15 MR. CHAPMAN: Forty percent. Okay,
16 thank you. All right. Thank you.

17 HEARING OFFICER SHEAN: Okay. We'll
18 show that coming in uncontested, as well.

19 Now, I'm not sure what the discussion
20 was about Worker Safety going over. Maybe you can
21 at least give us a preview of what it was that you
22 thought you wanted to discuss, and Worker Safety
23 comes in at page 129.

24 MS. DAVIS: I'd just like to say that
25 the reason why we're -- I suggested putting Worker

1 Safety off until tomorrow is because the same
2 person who did Worker Safety as Hazardous
3 Materials, and he could not be here today.

4 HEARING OFFICER SHEAN: Okay.

5 Why don't you just preview what it is.

6 MR. CHAPMAN: Well, the -- the preview
7 of the issue all has to do with fire -- fire
8 hazard, with regards to the trees and the location
9 of the plant to the Sausalito, in relationship to
10 it.

11 HEARING OFFICER SHEAN: The location of
12 the plant --

13 MR. CHAPMAN: In relationship to the --
14 to the Sausalito Ferry.

15 HEARING OFFICER SHEAN: Oh, to -- okay.

16 MR. CHAPMAN: And -- and just looking at
17 the increased fire hazards that come with those
18 two items.

19 HEARING OFFICER SHEAN: Okay. Trees and
20 proximity, then.

21 MR. CHAPMAN: Yes.

22 HEARING OFFICER SHEAN: Well, we can put
23 that off until tomorrow.

24 All right. I'm a little uncomfortable
25 trying to jump into other topic areas that are

1 likely more contested, but maybe we can sort of
2 preview them so we have an idea of what tomorrow's
3 going to shape up to be like. I mean, I obviously
4 assume we're going to be discussing significantly
5 Visual, Noise. How much on Biology? Anything
6 substantial from --

7 MR. CHAPMAN: Just a little.

8 MR. HARRER: Yes, very substantial from
9 us. Potentially very substantial.

10 MR. CHAPMAN: I think the -- it's --
11 most of my Biology stuff, and Bill and I haven't
12 gone over this together yet because we -- we were
13 prepared for tomorrow night, but there -- most of
14 it just has to do with the other agency contacts
15 and things, and what's been -- what's been done
16 there, or the lack of the same there.

17 The -- one real condition issue -- or,
18 excuse me, I've got a few condition issues here.
19 Yeah, I've got three condition issues, and then
20 some conversation as to what's been done and how
21 it's played into it.

22 HEARING OFFICER SHEAN: Okay. And back
23 from the Applicant's side?

24 MR. HARRER: As far as Biology?

25 HEARING OFFICER SHEAN: Right.

1 MR. HARRER: Yeah, there are a number of
2 issues. Probably one of the most general ones,
3 though, that we could talk about, is since the
4 beginning of the project we have made the point
5 repeatedly that the aquatic filter barrier is not
6 a part of this project. Never has been, and it's
7 been incorporated by Staff into the project, and
8 it should not be. And we'd like it removed.

9 HEARING OFFICER SHEAN: This is that --

10 MR. HARRER: Thunderbolt.

11 HEARING OFFICER SHEAN: Okay.

12 MS. DAVIS: Is it -- is it the
13 Conditions of Certification that refer to
14 monitoring of the aquatic filter barrier, are --
15 is that primarily the concern, or --

16 MR. HARRER: Well, the issue is that --
17 that whether or not the aquatic filter barrier is
18 -- is installed or not, and whatever happens with
19 it, it's a separate issue. It's -- it is not part
20 -- it pre-dated the AFC, it pre-dated the project.

21 MS. DAVIS: I'm just wondering what
22 about the Final Staff Assessment. I mean, the
23 discussion in the analysis I would think would not
24 be an issue, because it's just a discussion. And
25 the Condition of Certification --

1 MR. HARRER: Well, we don't think there
2 should be any reference to it at all.

3 HEARING OFFICER SHEAN: Okay. So if I
4 understand, so that ultimately, when it comes to
5 the Committee level, that the -- all the
6 Commission documentation is silent as to it, or it
7 can observe that it's taking place in another
8 jurisdiction.

9 MR. HARRER: Well, it is taking place in
10 another jurisdiction. That is true. It's under a
11 totally different process.

12 HEARING OFFICER SHEAN: Yeah, it could
13 be that CEQA generally would want us to observe
14 the totality of what's going on, and even discuss
15 -- even if it's subject to someone else's
16 jurisdiction, to note that since CEQA is an
17 expositional exercise, not a decisional one. But
18 is -- is that the sort of thing that --

19 MR. VARANINI: I think that --

20 HEARING OFFICER SHEAN: -- would begin
21 to address your concerns?

22 MR. VARANINI: I think the other thing,
23 what -- what we can do is one of the things, we've
24 got all our experts coming in, just like everybody
25 else does, on a serial basis, and we can -- I

1 think we can have a coherent recommendation
2 tomorrow.

3 HEARING OFFICER SHEAN: Okay. And do
4 you have anything that you anticipate on either
5 Visual or Noise?

6 MR. VARANINI: I'm certain that we do.

7 HEARING OFFICER SHEAN: Okay. All
8 right. Well, then we'll have an interesting
9 evening tomorrow.

10 MS. DAVIS: And possibly a long one.

11 HEARING OFFICER SHEAN: Well --

12 MS. DAVIS: Assuredly a long one.

13 HEARING OFFICER SHEAN: I think we can
14 crank this out.

15 All right. Well, then we'll see you at
16 5:00 o'clock.

17 MR. WORRELL: One --

18 HEARING OFFICER SHEAN: Yes, sir.

19 MR. WORRELL: -- last thing. We have a
20 significant number of people coming tomorrow, and
21 they won't be here. I was under the assumption
22 that this meeting was going to be like the -- with
23 a space like we have at the other meetings,
24 instead of such enclosed surroundings. I don't
25 know how to get the people not to come, at this

1 point in time.

2 HEARING OFFICER SHEAN: We'll just work
3 with what we have. We can perhaps get them to
4 bring in some more chairs, and we'll move back,
5 and this, that and the other, but --

6 MR. WORRELL: We're anticipating up to a
7 hundred people.

8 HEARING OFFICER SHEAN: Well, you know
9 --

10 MS. DAVIS: Do you know the -- oh, the
11 capacity of the room is 140, so -- no problem.

12 HEARING OFFICER SHEAN: All right.

13 MR. WORRELL: Can we set up chairs? Can
14 we sell tickets?

15 (Laughter.)

16 HEARING OFFICER SHEAN: Sure. We'll --
17 we'll make this a fund-raiser.

18 MR. VARANINI: How about out on the
19 river?

20 HEARING OFFICER SHEAN: You've hit on
21 something there.

22 All right. We'll be back at 5:00
23 o'clock tomorrow, then. Thanks very much.

24 (Thereupon the Workshop was
25 adjourned at 12:25 p.m.)

CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Workshop, not in any way interested in the outcome of said Workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of March, 2001.

VALORIE PHILLIPS

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